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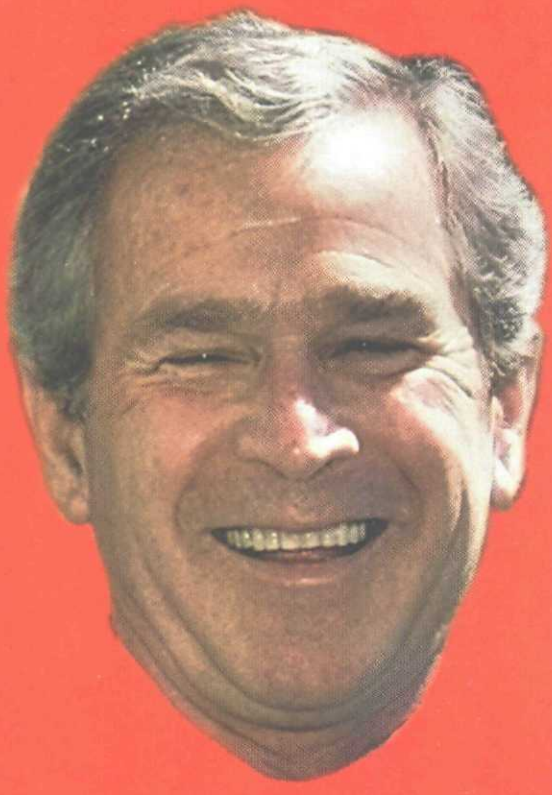

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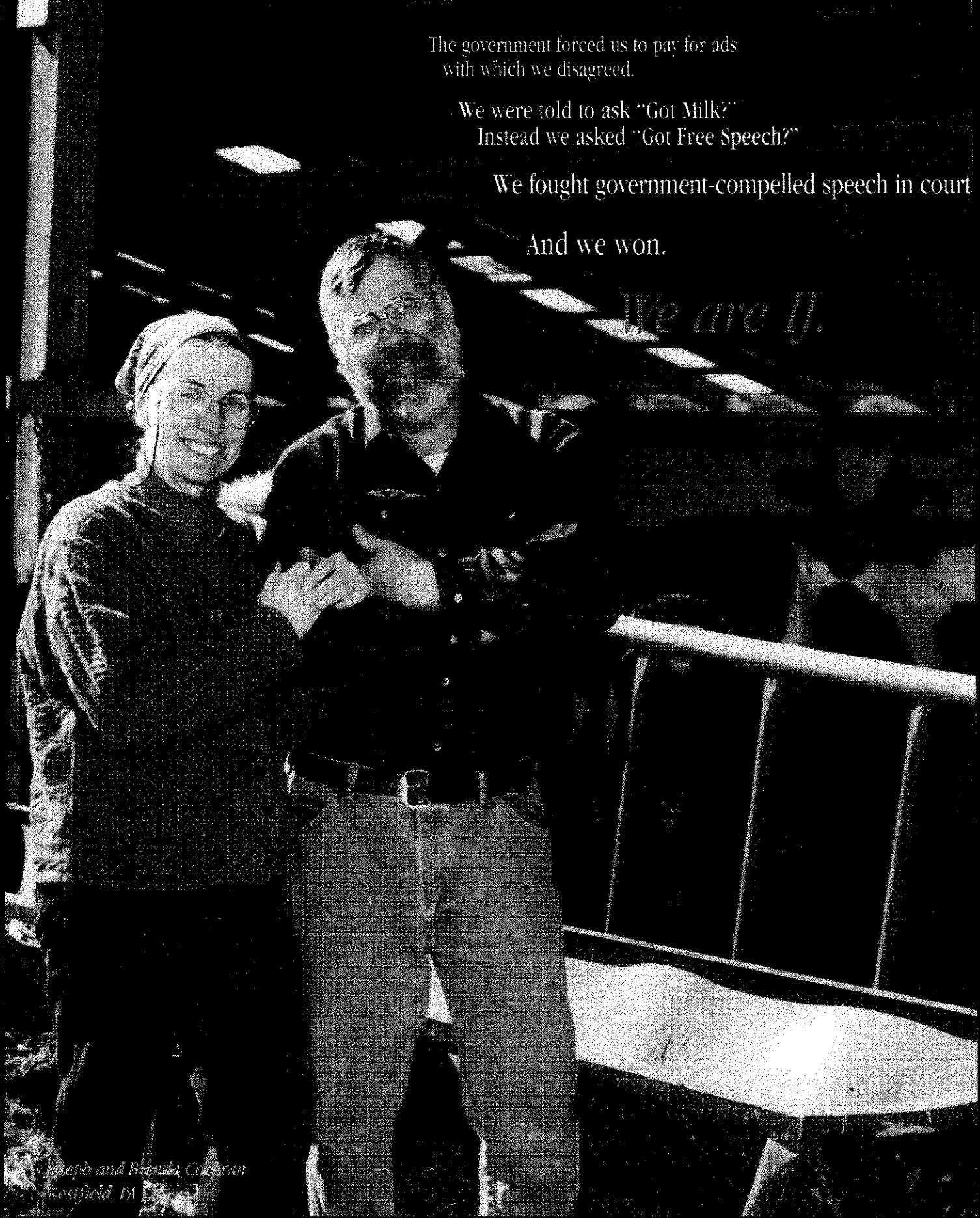
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Free Minds and Free Markets

October 2004
Volume 36, No. 5

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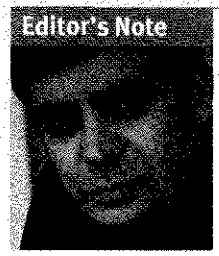

Why September Sucks

GIVEN THAT IT'S back-to-school season, it makes sense that this issue of **reason** boasts two feature stories about education, a subject that not only consumes billions of dollars every year but produces untold hours of parental and student anxiety.

In "Welcome to the Fun-Free University" (page 40), David Weigel reports on how the principle of *in loco parentis* has returned with a vengeance to the nation's colleges, strangling not only student freedom but most of the fun out of higher education. From the late 1960s through the '70s, all sorts of longstanding prohibitions, guidelines, and restrictions on student life were lifted, ushering in an age of autonomy, whether in personal lifestyles or in picking classes. To be sure, there were excesses, but there was also a good deal of interesting experimentation and exploration.

Yet by the time I graduated from college in 1985, the sun was already setting on that age. Many campuses had already gone dry (or were about to), and prosecutions for casual drug use were on the rise. Mandatory courses returned with a vengeance, freshman composition classes were becoming vehicles for what would soon be known as political correctness, and strident speech codes were just around the corner. Weigel charts how this remarkable turnaround happened and underscores the larger implications of the new nanny university: "The stiffening of campus law also illustrates the trend toward greater control of adults' personal behavior" in contemporary America.

In "No Way Out" (page 34), Lisa Snell documents the abject failure of the federal No Child Left Behind Act, which was supposed to rescue poor kids from failing public schools by giving them the "choice" to enroll at better institutions. Ballyhooed by a rare bipartisan coalition that included the likes of George W. Bush and Teddy Kennedy, the 2001 law doesn't even rate a grade of F. Since its passage, Snell reports, "less than 2 percent of parents nationwide have transferred their children to other public schools." That's not because of low demand. Rather, school districts have made it virtually impossible for such transfers to take place.

Like all too many education reforms, the No Child Left Behind Act is toothless, carrying no real punishments for a public school monopoly that excels only at maintaining the pedagogical status quo and increasing tax funding. As bad, there are no incentives for good schools to accept new students. Until bad schools lose federal per-pupil funding for failing to educate kids and high-performing schools gain funding, concludes Snell, the No Child Left Behind Act will remain a bitter joke played on poor and disadvantaged Americans.

No wonder education causes so much anxiety. And no wonder that, for students of all ages, September is the cruelest month.

— Nick Gillespie

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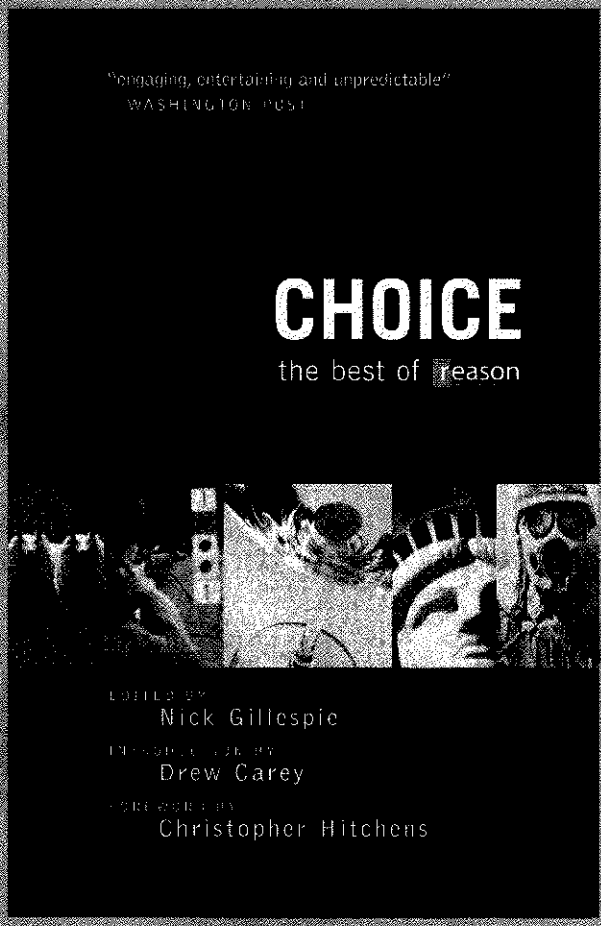

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Editor-in-Chief Nick Gillespie (gillespie@reason.com)

Managing Editor Jesse Walker (jwalker@reason.com)

Senior Editors
Brian Doherty (bdoherty@reason.com)
Charles Paul Freund (cpf@reason.com)
Jacob Sullum (jsullum@reason.com)

Assistant Editor Julian Sanchez (jsanchez@reason.com)

Science Correspondent Ronald Bailey (rbailey@reason.com)

Editorial Assistant Mary Toledo (mtoledo@reason.org)

Art Director Barb Burch (bburch@reason.com)

Photo Researcher Julie Wolf

Web Editor Tim Cavanaugh (tcavanaugh@reason.com)

Webmaster Brian J. Taylor

Reason Express Writer Jeff A. Taylor (jtaylor@reason.com)

Burton Gray Memorial Intern Hannah Metchis

Contributing Editors
Peter Bagge, Gregory Benford, James V. DeLong, Glenn Garvin, Mike Godwin, David R. Henderson, John Hood, Brink Lindsey, Carolyn Lochhead, Loren E. Lomasky, Mike Lynch, John McClaughry, Deirdre N. McCloskey, Michael McMenamin, Michael Valdez Moses, Charles Oliver, Walter Olson, John J. Pitney, Jr., Thomas Szasz, Matt Welch, Cathy Young, Michael Young

Publisher Mike Alissi (malissi@reason.com)

Legal Adviser Don Erik Franzen

Editorial and Production Offices
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064
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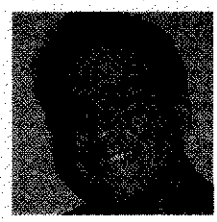
David Weigel

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DAVID WEIGEL knows something about paternalism on campus. When he was a sophomore at Northwestern University, a bad breakup and the stress of taking over a school newspaper had him down. So he called the university's depression hotline to blow off some steam—"basically," he says, "to talk myself out of a bad mood." Two hours later, university police were escorting him to Chicago Lakeshore Hospital for an involuntary three-day stay. "Then they sent me the bill," he recalls. "It was expensive!" Now an editorial intern at *USA Today*, Weigel examines the resurrection of *in loco parentis* in "Welcome to the Fun-Free University" (page 40).

As a member of the board of the Sunshine Project, which promotes transparency on bioweaponry issues, MICHAEL ERARD likes to keep track of what information governments let out or try to keep under wraps. In "Open Secrets" (page 48), he watches the veil of secrecy lift from the feds' version of an underground drug zine, *Microgram*. While completing his English doctorate at the University of Texas at Austin, Michael realized he preferred penning articles for the academic magazine *Lingua Franca* to teaching classes. Erard's work has since appeared in *The New York Times*, *The Atlantic Monthly*, and other venues; his book on slips of the tongue, tentatively titled *Um: Where Verbal Blunders Come From and What They Mean*, will be published next year by Pantheon.

Managing Editor JESSE WALKER loves that his home city of Baltimore is "comfortable being itself and not trying to be the sixth borough of New York." That localism, he feels, is part of what makes HBO's Baltimore-based *The Wire* "the best drama on TV." And he's not just saying that because he lives a few blocks from *Wire* creator David Simon, whom he interviews in this issue ("David Simon Says," page 56). Walker says he was thinking of writing in Alfred E. Neuman for president this year "until I realized he's already in office." His reasons for that assessment are illustrated by Terry Colon in "Ten Reasons to Fire George W. Bush" (page 32).

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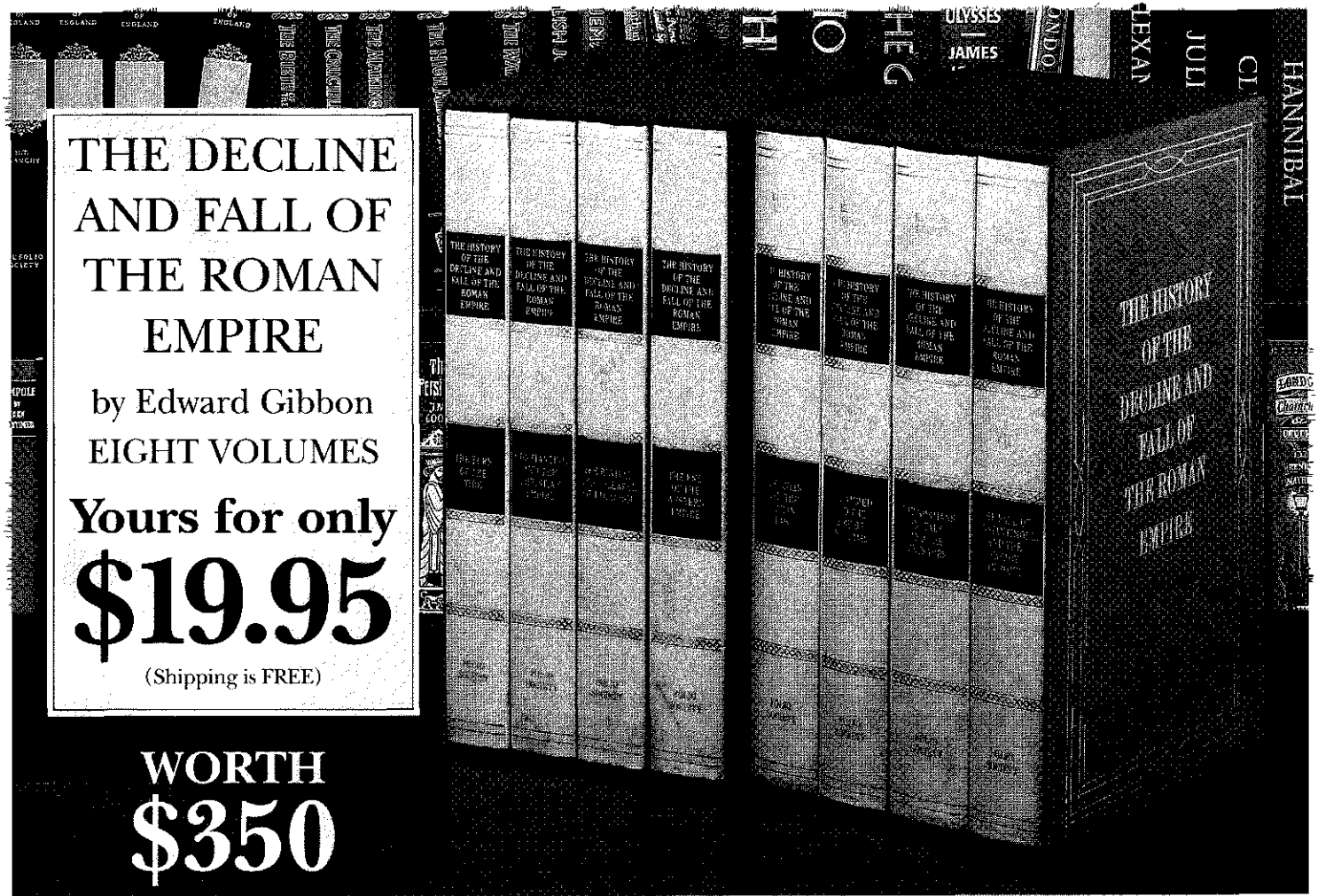

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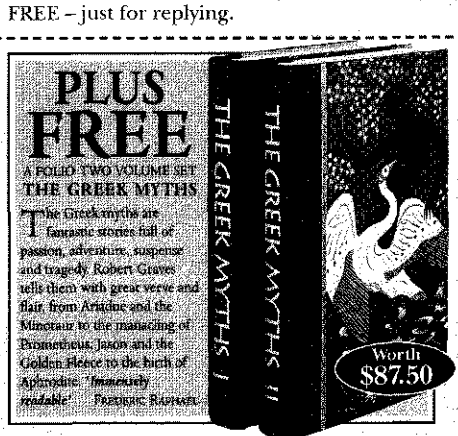
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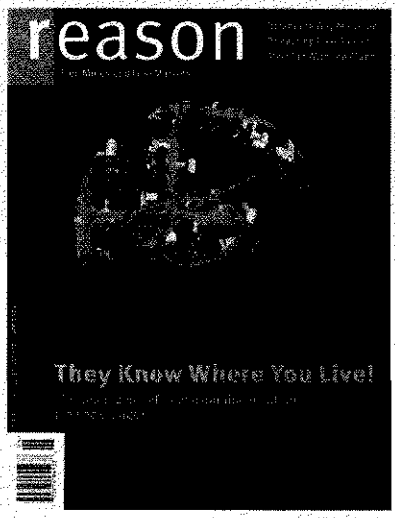

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Database Nation

Declan McCullagh's "Database Nation" (June) reminded me of a slogan from Terry Gilliam's 1985 film *Brazil*: "Information—Key to Prosperity." Both the film and his article observe how ideals such as personal liberty, dignity, and privacy interfere with the good life that society's institutions work hard to arrange for us. For McCullagh, viewing personal data as private property over which individuals should have control "chokes" the "engine" of the economy, which desperately needs data about our idiosyncratic behaviors in its fuel mixture. Gigantic cross-tabulations of personalized information become the latest high-performance additive to keep our economy tuned up and humming smoothly.

The general public, according to McCullagh, simply does not realize the degree to which its interests coincide with those of giant corporations. Why should citizens bother to protect their trivial personal data when they are among fellow legal entities? No need to obsess over the confidentiality of one's habits, hopes, and heartbreaks since, in the new economy, *we are all family*!

Talented MBAs from our principled corporations could rework this portion of McCullagh's message to have greater mass appeal, as a public service. Otherwise, silly neo-Luddites like Lewis Mumford, Jacques Ellul, Neil Postman, and Theodore Roszak will go unchallenged. Technophobic ideas like theirs can only stand between us and the custom-packaged happiness each and every one of us deserves. The databases *will* find us deserving...won't they?

Raymond Lyons
Cleveland, OH

While the article "Database Nation" will predictably raise worries about Big Brother and George Orwell's *1984*, perhaps a better point of reference is Aldous Huxley's *Brave New World*. As Neil Postman made clear in his seminal *Amusing Ourselves to Death*, Orwell and Huxley had very different dystopian visions of the future.

"What Orwell feared were those who would ban books," Postman wrote. "What Huxley feared was that there would be no reason to ban a book, for there would be no one who wanted to read one....Orwell feared that we would become a captive culture. Huxley feared we would become a trivial culture, preoccupied with some equivalent of feelies, the orgy porgy, and the centrifugal bumblepuppy. As Huxley remarked in *Brave New World Revisited*, the civil libertarians and rationalists who are ever on the alert to oppose tyranny 'failed to take into account man's almost infinite appetite for distractions.'"

For a libertarian to write a paean to the virtues of giving up the citizen's basic right to privacy in favor of the consumer's basic desire for convenience—to, in effect, embrace the excess, irrelevance, and triviality that Huxley warned about and which is inherent to any culture of consumption such as ours—makes me think that Huxley was right.

John Book
Newport Beach, CA

I got the June **reason** today, and that was indeed an impressive cover. I showed it to everyone at my local post office, and they were very impressed. One clerk said, "What's the name of that movie about the spy satellites?" "*Enemy of the State*?" The clerks wanted to snag the issue because they were excited about having their post office on the cover of a national magazine, but I insisted on keeping it.

Martin Morse Wooster
Silver Spring, MD

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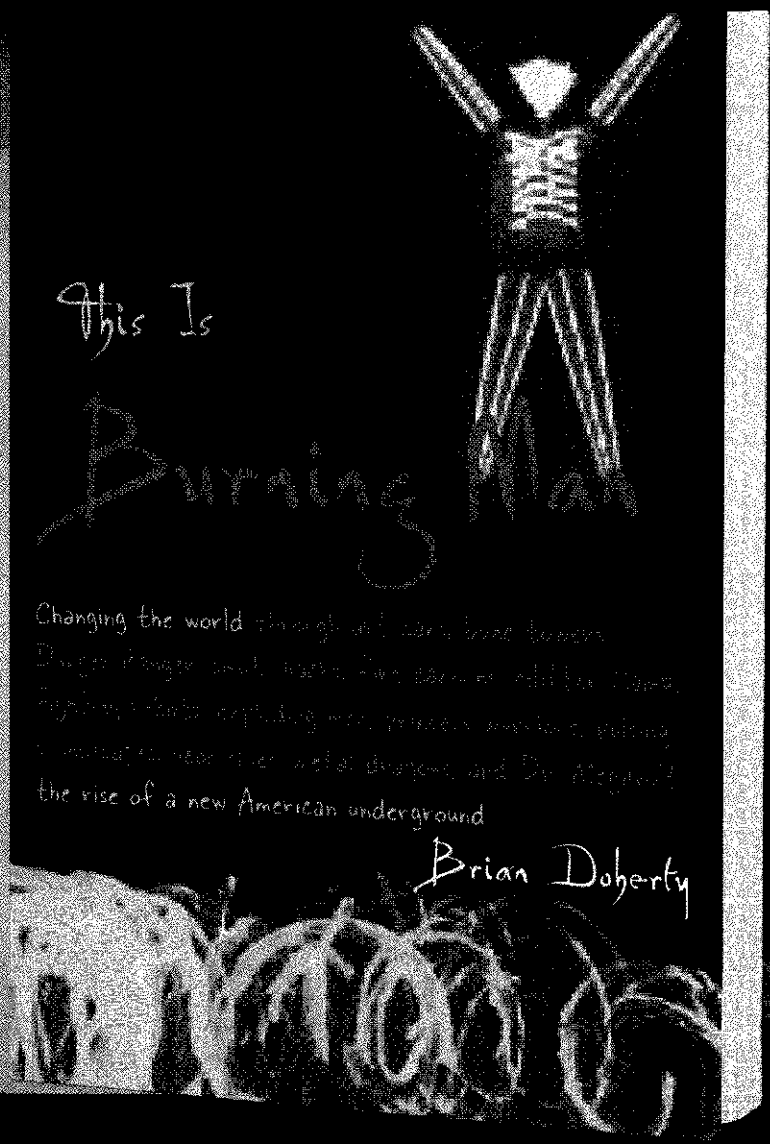

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Your personalized cover shows several problems with the "Database Nation" that Declan McCullagh trumpets—what can go wrong when incorrect databases are merged or when supposedly correlating information is used to connect two records. The aerial shot supposedly showing my neighborhood instead shows a rural farming area about 40 miles north of me. The street names are similar, and I suppose a naive programmer could think that I and some other Lewis are one and the same. But good guesses are not enough when use of the databases spread throughout our lives can result in the denial of financing, medical coverage, or housing.

Many people are having trouble boarding airplanes because the CAPPS system identifies them as threats. And when information is wrong, it is often impossible to correct or to trace back to the source. Talk to someone who has tried to get a credit report fixed. In the meantime I'll be in my backyard, hoping the crop dusters have a better mapping system than you use.

David B. Lewis
Bearsville, NY

Objections to These Unions

Jonathan Rauch ("Objections to These Unions," June) eloquently addresses the conflict between the natural evolution of institutions and their fairness. Although he notes the importance of the separation of church and state as an argument for not relying on a religious definition of marriage, he does not follow its logic to a different sort of resolution: no state involvement in marriage at all.

Before the recent ruling by the Supreme Judicial Court of Massachusetts, one might reasonably have predicted that over time states would adopt Vermont-type civil union options for same-sex couples seeking marriage. Such unions would provide for common property, inheritance, next-of-kin status in medical care decisions, and the other legal benefits conferred by a state-recognized marriage. Advocates of same-sex marriage generally see the differential labeling as discriminatory—a "separate but equal" solution that speaks inequality. The court's rejection of this evolutionary solution, however, is forcing a constitutional battle over the marriage label. A resolution consistent with liberal principles is for states to forgo bestowing the label altogether: Let states provide civil union and others in civil society bless, recognize, or proclaim civil unions as marriages in accordance with their own values.

A liberal resolution sees the *legal* rights of marriage as being in the state sphere and the proper interpretation of the institution of marriage as being in the private sphere. Its implementation requires that state constitutions abolish the term *marriage* altogether, replacing it with *civil union*. Religions, gay rights groups, and other organizations would then be free to recognize all or some civil unions as they see fit. The state would provide equality under the law and people would be free to express their belief about the morality of same-sex marriage through free association.

David L. Weimer
Department of Political Science
University of Wisconsin-Madison
Madison, WI

There are places where Hayek is even less conservative, and more liberal, than those passages cited by Jonathan Rauch. For instance, in "The Creative Powers of a Free Civilization," Hayek states, "We must recognize that even what we regard as good or beautiful is changeable, if not in any recognizable manner that could entitle us to take any kind of relativist position, yet in the sense that in many ways we do not know what will appear as good or beautiful to another generation."

Throughout this essay, Hayek makes the case for a wide-open social freedom based on the evolution of group mores. In this Hayekian universe, if there is a group that supports gay marriage, and if that group survives, then it is good. There is nothing in Hayek against subgroups advocating even radical social change. He is simply against government's forcing such changes.

In an ideal Hayekian world, there could be voluntaristic political entities that experimented with gay marriage and more controversial social changes. Perhaps state-level, as opposed to federal, decision making on such issues is the closest we can get at present.

Michael Strong
Angel Fire, NM

reason News

Senior Editor Brian Doherty's book *This Is Burning Man*, which chronicles the rise of a new American underground, was published this summer by Little, Brown.

Edited by Nick Gillespie, *Choice: The Best of Reason*, an anthology of the past decade of this magazine, is now available from BenBella Books.

With this issue, Mike Alissi, our publisher since 2000, takes his leave. Mike, who has joined an electric services firm in his native Connecticut, was central to every success we've enjoyed in the past few years. Even as we'll sorely miss his friendly presence and great insight, we wish him the best of luck.

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Top–Notch Friendly Customer Service: Our huge inventory of rare coins and gold, silver, and platinum precious metals means we can almost always ship immediately on receipt of good funds, unlike other dealers who have to wait while coins come from a supplier. We have quoted firm buy and sell prices every business day for 33 years. We offer useful information as a friend, not a hard sell. We want you to be satisfied with every purchase from Liberty Coin Service—and continue a mutually profitable long–term relationship.

Hassle–Free Customer Confidentiality: Liberty Coin Service has never made its customer list available to an outside party and has a policy to never do so. We also have never made cold calls to existing or prospective customers. Your privacy is important to us.

An Award–Winning Firm Honored By Peers: General Manager Pat Heller currently serves as an officer and on the Board of Directors of ICTA, the national trade association for rare coin and precious metals dealers. He is also the only coin dealer member of the American Numismatic Association's prestigious committee on The Future Of The Hobby.

He was recently honored with 1) the Michigan State Numismatic Society's highest award (only the second recipient in the organization's 47–year history), and 2) the 2004 Socially Responsible Entrepreneurial Award of Greater Lansing! Liberty Coin Service is currently a nominee for the 2004 Michigan Retailer of the Year award.

A Frequently–Quoted Monthly Newsletter: Our monthly customer newsletter, *Liberty's Outlook,* regularly scoops others with a wealth of factual information and analysis about precious metals and rare coins. It is regularly cited in other newsletters and even by our competition. The editor of one national weekly coin newspaper says that it is his favorite coin dealer newsletter. Subscribers to *Liberty's Outlook* pay $79 per year.

A Special Get–Acquainted Offer: With our financial strength and extensive industry contacts, we regularly uncover great bargains for our customers. Here's proof:

In 1998, the Royal Canadian Mint struck a 1 Ounce Silver Maple Leaf $5.00 Coin with a *Titanic* privy mark to honor the famous ship. The coin catalogs for $100. The main marketer of these coins sold them for $49–79 each. They typically sell in internet auctions for $30–40. But, through a special purchase, Liberty Coin Service customers can purchase these coins for just $29.95 each (1–4 coin orders), to as little as $24.95 (50 coin orders). The only extra fee is a flat $12 postage charge on rare coin orders.

Plus, get a **Free Bonus:** With any purchase, you will receive a complimentary 3–month subscription to *Liberty's Outlook*. Purchase 20 or more coins and receive a complimentary one–year subscription (a $79 value)!

We guarantee that you will be satisfied. You have 15 days upon your receipt to return the coins for a full, prompt, no–questions refund.

Make Liberty Coin Service your rare coin, gold, silver, and platinum dealer today and ten years from now. To request a package of information, for current quotes on our buy or sell prices, or reserve your purchase, call our Trading Desk direct, toll–free, at **800–527–2375**. Thank you.

Contact Liberty Coin Service today, toll–free at 800.527.2375
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Bhutan's boob tube; the war on "indecency"; anti-drug "vaccines"; second-guessing the First Amendment; polluting with cleaner cars; dark horse Libertarian; cleaning up e-mail

Berkeley's prostitution initiative

Love for Sale

Tim Cavanaugh

NEWS THAT A November ballot initiative in Berkeley, California, would move toward decriminalizing prostitution may not have diminished Berkeley's reputation as a place for wacky legislation. But the ease with which the initiative came to a vote shows how progressive and feminist opposition to the sex trade may be evolving.

Supporters of "Angel's initiative" (named for a murdered transgendered prostitute) were easily able to collect more than 3,200 signatures for their petition, and in early July they estimated that they'd already gotten a solid half of the city's population on board for the vote. As for feminist objections about the exploitation of women, sponsor Robyn Few of the San Francisco–based Sex Workers Outreach Project (SWOP) says: "I've heard all the arguments, and I've made several myself. Prostitution is not for everybody, and it can be really harmful to women. And the reason it's harmful is criminalization."

The initiative would make hooking the city's lowest policing priority, require the cops to make regular reports on prostitution arrests, and ask the city to lobby the state of California for decriminalization. Although it's largely symbolic, the measure could have an effect on the sex trade in Berkeley itself—which is why Berkeley's City Council voted to table the bill when it was considered early this year. SWOP is focusing its campaigning in the city's second and third districts, where prostitution is common.

Still, a softer line on soliciting doesn't mean Berkeley's lefties have adopted a broader view of individual rights. "Some of the hard-core libertarian language was removed when the bill was in the council," says Few. "There were references in there to the right to free trade, which they cut." ▮

Fat ad budgets and fat kids

Teletubbies

Jacob Sullum

A FEBRUARY REPORT from the Kaiser Family Foundation noted that kids who watch a lot of TV are more likely to be fat than kids who don't. It said exposure to food commercials was the most likely explanation. That theory fit well with recent press coverage of the issue: A study released in June by the Media Research Center's Free Market Project found that news reports overwhelmingly blame food vendors' attempts to pad their bottom lines for Americans' expanding waistlines.

One problem with linking fat kids to fat ad budgets is that TV ads for food are not a new development, as those of us

25 years ago in reason

"People who resist authority, who defend the rights of the individual, who try in a period of increasing totalitarianism and centralization to reclaim these rights—this is the true left in the United States. Whether they are anarcho-communists, anarcho-syndicalists, or libertarians who believe in free enterprise...I feel much closer, ideologically, to such individuals than I do to the totalitarian liberals and Marxist-Leninists of today."

—"*REASON* Interview: Murray Bookchin"

"Many people in Cleveland had always thought that Dennis Kucinich was a vicious little demagogue who would walk over his own grandmother if she stood in the way of his climb to higher office."

—Michael McMenamin and Earle Turner, "Populism for Power"

"The Honorable Charles Diggs (D-Mich.) has altruistically offered to pay back the $40,031.66 he stole from the federal treasury. This offer of uncharacteristic honesty was accompanied by a pledge not ever to do it again."

—Thomas Winslow Hazlett, "Brickbats"

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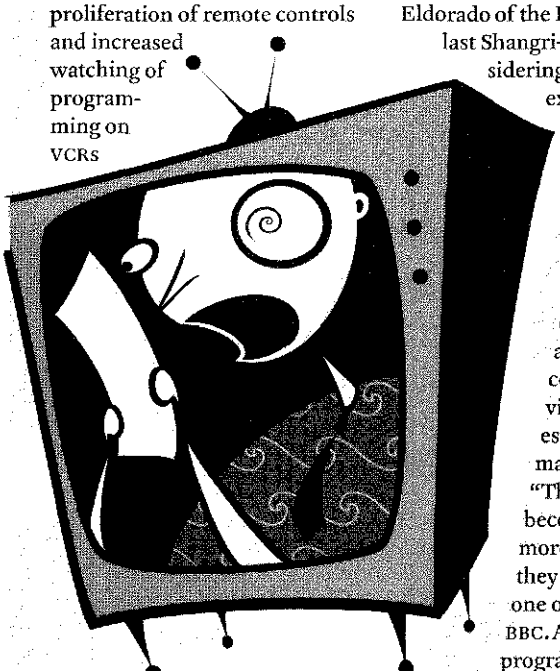
whose heads still ring with the slogans and jingles of the 1970s can attest. Despite their heavy exposure to the Trix rabbit, the Keebler elves, and Ronald McDonald, that generation of kids was not especially heavy. According to the U.S. Centers for Disease Control and Prevention, about 6 percent of Americans between the ages of 6 and 19 were overweight in the mid-to-late 1970s, compared to 15 percent in 2000.

If anti-fat activists are right that advertising plays an important role in rising obesity among children, perhaps it's because today's kids see more of it than their parents did. Yet Todd Zywicki, a George Mason University law professor who recently served as director of the Federal Trade Commission's Office of Policy Planning, found just the opposite: If anything, kids see fewer food ads than they did when they were thinner.

Zywicki, whose conclusions will be reported in an upcoming issue of the *George Mason Law Review*, notes that the frequency of food ads has not increased, while kids are spending less time watching broadcast television and more time playing video games, using computers, and watching cable TV, videotapes, and DVDs—media with fewer or no food ads. Meanwhile, the proliferation of remote controls and increased watching of programming on VCRs and DVRs have made it easier to skip commercials.



At a Cato Institute forum in June, Zywicki proposed a thought experiment to test the plausibility of the idea that advertising has a substantial impact on weight. He asked his audience to imagine a fat child who watches six hours of Nickelodeon a day. Would you expect him to get thinner if his parents switched him to six hours of commercial-free PBS programming?

Probably not. "Watching too much TV is going to make you fat," Zywicki said, since it's a sedentary activity and people tend to snack while they watch. But if advertising had the influence its critics suggest, "the PBS diet would work."

And while you're contemplating the kid on the couch, don't forget the dog in the corner. "Our dogs are getting overweight for exactly the same reasons we are," Zywicki noted. "They're eating too much and exercising too little. They're not watching too much advertising." ▮

Shangri-la wrestles with TV

Bhutan's Boob Tube

Charles Paul Freund

THE HIMALAYAN kingdom of Bhutan, which calls itself "the Eldorado of the East" and "the last Shangri-la," is reconsidering its five-year experiment with TV. Broadcasting authorities in the tiny country nestled between India and Tibet are concerned about a perceived increase in violent behavior, especially among male students. "The students are becoming more and more violent when they are at school," one official told the BBC. A bill to restrict program choices was before the legislature last summer.

TV came to Bhutan in 1999. Most Bhutanese still have no television, because 70 percent of the populace is without electricity. The remaining 30 percent see only three hours of TV programs each day, with much of that time devoted to news in Bhutan's four languages as well as service programming addressing "farming methods, health and hygiene, environment preservation, distance education, rural development, women and child care," according to a Bhutanese Web site.

The programming most often cited for inciting violence is, of all things, American professional wrestling matches. Older boys, some charge, are using wrestling holds to intimidate younger students. But local scholars who have been studying the impact of new media on this isolated Buddhist society suggest that the furor over pro wrestling is a moral panic, and that it has more to do with change than with violence. As media scholar Shockshan Peck told the BBC, "Young people are now much more in tune with globalization and what is happening around the world. The risk is that the more we learn about the world, the more we're losing of our own culture." ▮

No tech firm left behind

School Net Scams

Lisa Snell

PUERTO RICO HAS spent $101 million in federal grants to wire 1,500 public schools for Internet access. Yet the island-wide school district warehoused most of the equipment for more than three years, and only nine schools were actually connected to the Internet.

Like most large-scale government giveaways, the federal E-rate program, which collects $2.5 billion a year in telephone taxes to hook up schools and libraries to the Internet, has produced a huge amount of fraud and abuse. The Chicago public schools have more than $5 million in E-rate »

Quotes

"We're going to take things away from you on behalf of the common good." ▮

—Sen. Hillary Clinton (D-N.Y.) on tax policy at a fundraiser for Sen. Barbara Boxer (D-Calif.), quoted by the Associated Press, June 28

"I would argue that the future of our country hangs in the balance because the future of marriage hangs in the balance. Isn't that the ultimate homeland security, standing up and defending marriage?" ▮

—Sen. Rick Santorum (R-Pa.) on the Federal Marriage Amendment, shortly before its defeat, quoted by the Associated Press, July 14

Source

For plenty of journalists, objectivity means not an effort to get at the truth but the process of quoting a spokesman on either side of every issue. Fortunately, the folks at the University of Pennsylvania's Annenberg Public Policy Center are a bit old-fashioned: At FactCheck.org, they scrutinize the claims made by presidential campaigns and partisan groups, sorting fact from fiction. So far, they haven't revealed a bias of their own: They've pointed out a series of misleading claims from the Bush camp about John Kerry's voting record but also defended the president's against attacks from environmental groups. ▮

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Brickbats

Cerebral palsy has left Courtney Glowczewski with a withered arm and leg. Unfortunately, that has made her a target for harassment by some students at Denver's Martin Luther King Middle School. She's been taunted and threatened and has even had a knife pulled on her. Finally, after another student set her hair on fire, the school acted: It told Courtney not to come back for the rest of the year.

Slobodan Milosevic has had his bank account frozen, and his funds may be seized for war reparations. That's Slobodan Milosevic the Munich bus driver, not the former Yugoslavian president on trial for war crimes. The former Slobodan says he has tried to convince the bank he isn't a dictator: "I tried to explain that in Serbia my name is common as Hans Schmidt here, but they told me Hans Schmidt was not a war criminal."

Those who dine at the Russian parliament's commissary will have to use plastic utensils. Officials made the switch because members of parliament had been stealing the silverware.

The state of Nebraska can't account for thousands of dollars spent by its anti-tobacco program. And a state auditor says hundreds of thousands more may have been mismanaged. Rock Mueller, the man in charge of the program, was hired in 2001, while he was in the state penitentiary for theft. His wife is an official in the state personnel office.

The British government is considering a plan to let local governments seize houses that have been vacant for at least six months and rent them out. The governments will have to pay the rent back to the owners—after keeping enough to cover their costs, of course.

Singapore has mandated that all cigarette packs carry graphic images of what smoking can do. Packs will now feature rotten teeth and diseased organs as well as a smoker on his deathbed.

The U.S. Treasury Department's Office of Foreign Assets Control is charged with investigating the finances of terrorist organizations and enforcing America's economic embargo of Cuba. At the end of 2003, the office had just four full-time workers assigned to tracking the money of Al Qaeda and Osama Bin Laden. It had 21 agents trying to enforce the Cuba embargo.

Saparmurat Niyazov doesn't like gold fillings. Unfortunately for the people of Turkmenistan, Niyazov is their leader, and his whims are law. So people who work for government agencies, state-run companies, and universities—not to mention anyone else who doesn't wish to get on the dictator's bad side—are rushing to have their fillings removed. Niyazov has also banned beards, ballet, and circuses, and has jailed more than 20,000 people for defying his edicts.

An Italian driver has been fined 300 euros and assessed 500 euros in court costs for calling a parking attendant a "nobody." A court ruled that this was slander.

Charles Oliver

› computer equipment sitting in a warehouse. In San Francisco school officials discovered that a $68 million project should have cost less than $18 million. In June the Federal Communications Commission reported that 42 criminal investigations were under way.

Large corporations have gained millions from the E-rate feeding trough. In May NEC Business Network Solutions pleaded guilty to rigging bids at six school districts; the company will pay a $20.6 million fine. And in June *The New York Times* revealed that the El Paso school district paid IBM $35 million to build a network powerful enough to serve a small city. When the school district could not run the network, IBM charged it an additional $27 million to build a maintenance call-in center that was shut down after nine months when funding ran out.

With the federal government auditing less than 1 percent of E-rate recipients, these cases may be just the tip of the iceberg in a program that has spent $13 billion to date. But the program enjoys bipartisan congressional support, and legislators argue that, thanks to E-rate, 90 percent of schools now have access to the Internet.

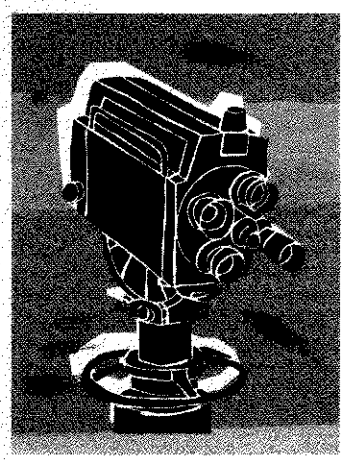
The war on "indecency"

Your Records, Please

Jesse Walker

THE CRACKDOWN on "indecent" broadcasts did not end when Janet Jackson apologized for her Super Bowl wardrobe malfunction. In July the Federal Communications Commission proposed a new requirement "that broadcasters retain recordings of their programming"—known as "airchecks" in the trade—"in order to increase the effectiveness of the Commission's process for enforcing restrictions on obscene, indecent, and profane broadcast programming." In other words, the government wants stations to keep tapes of all their programs so regulators can check the record when someone files a complaint.

The details are still hazy: The commissioners haven't decided how long the airchecks must be retained, and it's not yet clear whether the government will insist on recordings of all broadcasts or only of programs transmitted between 6 a.m. and 10 p.m., when "indecent" material is prohibited. But the commission hopes to resolve those questions and enact the new regulation as quickly as possible. When its "notice of proposed rulemaking" was issued on July 6, public comments were due just 24 days later.



The FCC is aware that the new requirement could be a burden on independent stations, and it has specifically requested comments on "the impact that retention rules may have on small broadcasters." But the news for the business community isn't all bad. As the industry publication *Inside Radio* notes, "Makers of digital aircheck equipment are in for a bonanza."

Anti-drug "vaccines"

Injecting Tyranny

Jacob Sullum

DRUG WARRIORS may soon take their fight to our bloodstreams. Companies in the U.S. and the U.K. are developing "vaccines" to discourage drug use by preventing people from enjoying it.

These "vaccines" stimulate the immune system to produce antibodies that bind with drug molecules, making them too large to pass the blood-brain ››

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Balance Sheet

Jeff A. Taylor

The Classifieds

The 9/11 commission recommends that the federal culture of secrecy be replaced with one of information sharing between agencies and the public. Classification costs at least $6 billion a year, but the exact amount the CIA spends is...classified.

Holding Court

The U.S. Court of Appeals for the D.C. Circuit finally wraps up the Microsoft antitrust case, rejecting a challenge to the settlement by the state of Massachusetts and others. Microsoft says the decision frees it to go back to just building software.

Fire Bug

Meet the next generation of fire alarms, built on beetle guts and with a range of several miles. The University of Bonn uses the infrared-sensitive sensors of the jewel beetle as a template for a remote fire-sensitive network that could sniff out forest fires very quickly.

Know-Why List

U.S. District Judge Charles Breyer tells the Transportation Security Administration that information about the federal "no fly" list cannot be kept secret without justification. Breyer found that newspaper clippings and the names of federal officials were among the things the government wanted to keep "secret."

Water Life

Researchers at Arizona State University move water molecules with light, a manipulation of basic physical building blocks with big possibilities. Microfluidics deployed in chemical or pharmaceutical research could create new compounds or make existing ones much cheaper.

VoIP Lessons

Another benefit of the Voice over Internet protocol? How about allowing cash-strapped start-ups to avoid Fortune 500–sized phone bills? Virtual offices spring up across times zones or across oceans, and VoIP keeps communication costs low.

Pot Heads

Houston landscaper Blair Davis sees the Harris County Organized Crime and Narcotics Task Force burst into his house, guns drawn, after the Texas Star hibiscus he grows is mistaken for pot. The lawmen also give the once-over to red and gold bamboo plants and Davis' melon crop.

Safe Mode

Microsoft Chairman Bill Gates invites members of the National Governors Association over for a drink and triggers a "Gates Residence Security Zone" from Homeland Security. A chunk of Lake Washington near Seattle is off-limits to the public for two days as a result.

Illogical Flights

The U.S. Department of Transportation tries to fix chronic delays at Chicago's O'Hare Airport by telling airlines to change their schedules. If landing rights were doled out by something resembling a market, this "help" wouldn't be needed.

Hot Potatoes

South Africa looks to expand experiments with genetically modified potatoes, and anti-GM groups in the country go crazy. They claim South African consumers will want no part of the crop.

Particle Principle

A joint report by Britain's Royal Society and Royal Academy of Engineering warns that engineered nanotech particles can be toxic and therefore must be proven nontoxic before they are allowed to interact with the environment.

Bag Job

An Indiana man finds a mysterious pair of wire cutters in his luggage after a flight in which security screeners hand-searched his bags. The Transportation Security Administration says its appearance in checked baggage is not a security concern.

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Data

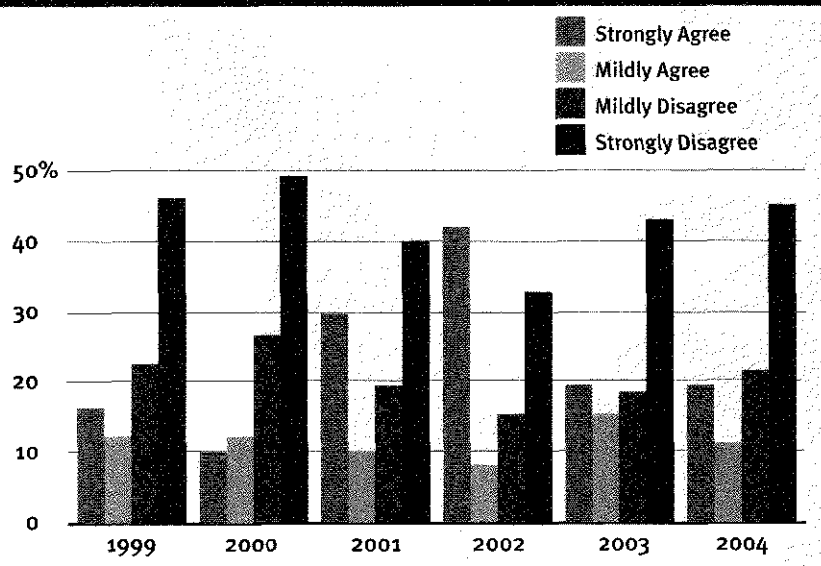
Second-Guessing the First Amendment

Julian Sanchez

The First Amendment Center's *State of the First Amendment* survey, which polls Americans on their attitudes toward the First Amendment each year, found that in 2004 only 30 percent agreed that "the First Amendment goes too far in the freedoms it guarantees." However troubling that figure may be, it's a marked improvement over 2002, when a record 49 percent gave that response.

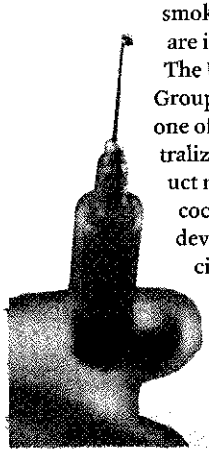
Still, people seem to be more fond of free speech in the abstract than in specific instances. While 88 percent thought we have either too little or about the right amount of ability to speak freely today, 63 percent thought people shouldn't "be allowed to say things in public that might be offensive to racial groups," and an unsettling 41 percent thought newspapers should not be permitted to criticize the military's strategy and performance. Just over half said the war on terror justifies monitoring of "certain religious groups, even if that means infringing upon the religious freedom of those groups' members."

Does the First Amendment Go "Too Far"?



Source: First Amendment Center, *State of the First Amendment 2004*

› barrier and thereby neutralizing their psychoactive effects. Two such molecule binders, aimed at smokers trying to quit, are in clinical trials. The U.K.-based Xenova Group, which makes one of the nicotine neutralizers, says its product may also work with cocaine; it wants to develop similar "vaccines" for heroin and Ecstasy. In the U.S., the National Institute on Drug Abuse is enthusiastically supporting research in this area.



"The American government's hope," says a June report from the Center for Cognitive Liberty & Ethics (CCLE), "is that demand for illegal drugs can be reduced, in part, by chemically eliminating the very *desire* to use an illegal drug." The CCLE worries that, given the government's tendency to view drug users as disease carriers, anti-drug agents will be forced on prisoners, probationers, and recipients of taxpayer-financed benefits, including public school students.

Sure enough, a month after the CCLE report (available at cognitiveliberty.org) came out, the *Independent* reported that the British government was considering "a radical scheme to vaccinate children against future drug addiction." The story implied that such treatment could be mandatory, saying "the scheme could operate in a similar way to the current nationwide measles, mumps and rubella vaccination program." The chairman of the House of Commons Health Committee told the paper "this could have a huge impact on society in terms of preventing damage to others and dealing with addicts." He added that "the ethical perspective does need to be looked at closely."

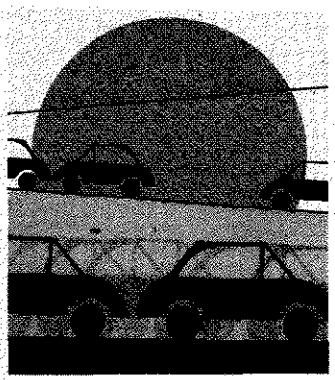
That is what the CCLE tries to do in its report, which argues that forcing people to take anti-drug agents would violate the principle of informed consent, impose cruel or unusual punishment, and infringe upon freedom of thought. The U.S. Supreme Court once declared that "the most tyrannical government is powerless to control the inward workings of the mind." That is no longer true, the CCLE concludes: "Pharmacotherapy drugs now give the government that power." ▮

Polluting with cleaner cars

Hydrogen Hot Air

Adrian Moore

PRESIDENT BUSH'S State of the Union address included a proposal to spend $1.2 billion developing hydrogen-powered cars. California Gov. Arnold Schwarzenegger is so taken with the idea that he wants to open a statewide network of hydrogen fueling stations.



Hydrogen cars are a popular environmental cure-all because they are supposed to dramatically reduce greenhouse gas emissions. A simulation for the Reason Foundation, conducted by chemical engineer William Korchinski of Advanced Industrial Modeling, attempted to estimate the decline in carbon dioxide emissions that would

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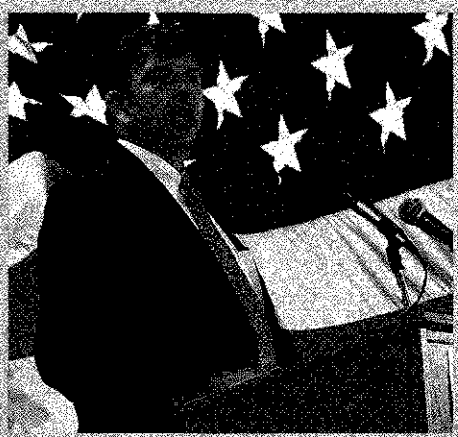
Libertarian Dark Horse

Brian Doherty



Michael Badnarik

Over Memorial Day weekend the Libertarian Party gathered at the Marriott Marquis in Atlanta and chose its presidential nominee: a former computer consultant from Austin named Michael Badnarik, who teaches a one-day course on the Constitution. He won in an upset on the third ballot over two better-known and better-funded competitors, talk show host Gary Nolan and movie producer Aaron Russo. Senior Editor Brian Doherty interviewed a stunned Badnarik two days after his victory.

Q: How did you come to run for president?

A: After giving a well-received speech supporting another Texas Libertarian candidate, I called a Libertarian friend, and that friend's first words were, "We want you to run for president." And I said, "Of what?"

I resisted the idea of running—yes, I had run for state representative, but I'd never held any significant office. The excuse they gave me was that they were familiar with my Constitution class. I could not only teach for eight hours, but anytime I'm in a conversation, it's always on a libertarian issue, and the person I'm conversing with almost always goes away agreeing with me.

Q: You ran a remarkably shoestring campaign.

A: My driver and I would occasionally get to a new location and realize we only had eight bucks, and have to sell books to buy lunch and gas. We had an e-newsletter we'd send out periodically with a plea for help: "We're stranded. We have no money!" When we arrived in Atlanta, we couldn't afford a room at the Marriott.

Q: You're suddenly getting lots of media attention; what interests them about you?

A: The human interest fascination of the come-from-behind dark horse, and also the realization that all three candidates were basically expressing the same message. When you vote for the L.P., whether you know the candidate or not, you know the platform.

Several friends cautioned me I'd have to modify my message so as not to scare voters. I said, if you want to vote for a modified message, you'll have to vote for a Democrat or a Republican. Some things are not negotiable, and the Bill of Rights is one of those things. I deliver the libertarian message the way I see it. If you don't like that, you are not required to vote for me.

Q: There has been some controversy over your stances against the legal obligation to pay income taxes or use driver's licenses.

A: I have been an activist fighting smaller battles in the past, but right now those are no longer the important issues, and I'm not willing to waste time—I know that I have bigger fish to fry.

have resulted from switching every car in California to hydrogen fuel in 1981. He found that the decline would likely not even be measurable. A comprehensive comparison of the emissions released by hydrogen and gasoline vehicles, as well as those caused by the manufacture, transport, and distribution of both fuels, shows that in most cases fueling cars with hydrogen would make little net difference in emissions of greenhouse gases, and in some cases would even increase them.

For example, hydrogen is made via electrolysis or by reforming hydrocarbons, and both methods take a lot of electricity—most of which comes from burning fossil fuels. And hydrogen can't be sent through pipelines, meaning more truck trips to haul hydrogen to fueling stations.

New cars have very low emissions, and hybrid gas-electric vehicles already on the market emit even less. Yet the kind of incremental improvements that drive so much real progress aren't as exciting to many environmentalists—and presidents—as flashy silver-bullet solutions. ▯

An end to spam?

Cleaning Up E-Mail

Hanah Metchis

THANKS TO THE ingenious CAN-SPAM Act passed by Congress last year, junk e-mail in the United States has been drastically reduced, rendering many inboxes completely spam free.

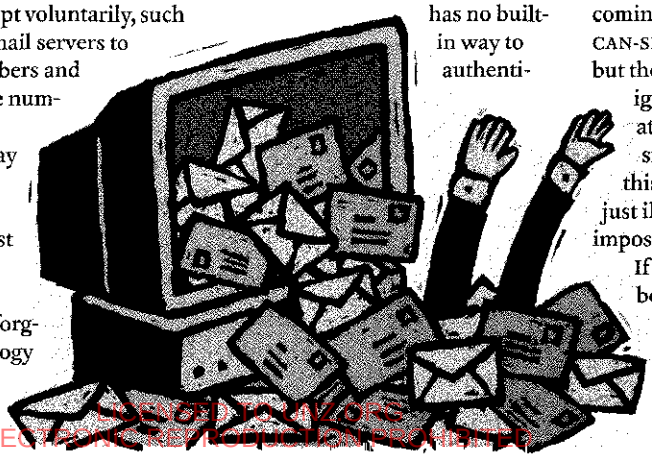
Just kidding. Despite the new law, spam continues to increase, and recent studies by makers of anti-spam software found that less than 10 percent of junk e-mail complies with CAN-SPAM.

Fortunately, Congress isn't the only group working on the spam problem. The Anti-Spam Technical Alliance (ASTA) is a coalition of some of the largest e-mail providers on the Internet, including Microsoft, AOL, Yahoo!, and Earthlink. In late June it published some proposals designed to slow the onslaught.

Most of the recommendations consist of practices the alliance hopes Internet providers will adopt voluntarily, such as closing mail servers to nonsubscribers and limiting the number of messages per day each user can send. But the most promising suggestion is the anti-forgery technology ASTA members are developing.

The SMTP protocol, used for sending and receiving e-mail, has no built-in way to authenticate senders. Spammers use this weakness to hide their identities and send mail that looks like it's coming from somewhere else. CAN-SPAM makes this illegal, but the law is almost universally ignored. ASTA hopes to create methods to digitally sign content and make this kind of "spoofing" not just illegal but technologically impossible.

If *that* works, it might finally be possible to make some headway in the battle against junk e-mail. ▯



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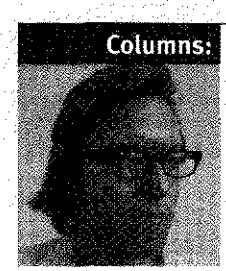

Unbalanced Like a Fox

Rupert Murdoch's critics should follow his lead.

In 1932 Thomas Storke, editor and publisher of the Santa Barbara *Daily News*, faced a dilemma that seems positively alien in 2004. Storke's competition, the 58-year-old Santa Barbara *Morning Press*, was on the brink of bankruptcy, and it begged him to take over as owner.

Today we'd expect the dominant daily to quickly euthanize the straggler, maybe absorb some of the fired staff, and enjoy the 20-percent-plus annual profit margins of monopoly publishing. It's what the *Los Angeles Times* did to the *Herald-Examiner* in 1989, it's what the Hearst Corporation *tried* to do to its San Francisco *Examiner* while buying the market-leading *Chronicle* in 2000, and it's something the *Chicago Tribune* may soon do to the flailing *Sun-Times*.

But Storke belonged to a long-vanished era that is only now making a bitterly contentious comeback: a time when *monopoly* was a dirty word and daily newspapers identified openly with political parties. The editor was more of a Democrat than Rupert Murdoch has ever been a Republican: He served as a U.S. senator for two years, played a crucial kingmaking role at three presidential conventions, and used his sway with President Roosevelt to funnel several major public works projects to California's Central Coast. But it was Storke's sense of partisanship that stayed his hand from shutting down the local organ of his rival party.

"If the town's only Republican paper should merge with the independent, but pro-Democratic paper which I published, would not the ugly cry of 'monopoly!' be sounded against me?" Storke recounted in his charming 1958 memoir *California Editor*. "And monopoly was something I and my father before me had been fighting all our lives....In Santa Barbara city and county more Republicans were registered than Democrats. I realized full well that the community should not be deprived of such an outlet of expression."

Storke's bundling of anti-monopoly sentiment and party politics, and his partisan conception of the audience, was the American newspaper norm before World War II, when media colossi like William Randolph Hearst tried to publish their way into the White House. Yet the exact inverse—nonpartisan monopolies—became the industry paradigm less than a generation later.

With start-up costs (and, in the case of broadcasting, limited spectrum allocation) proving an almost insurmountable barrier to entry, advertisers soon discovered that their products didn't sell well to people turned off by a news organization's politics. So during the newspaper consolidation era of 1960 to 2000, elite news became deliberately apolitical. Reporters, who had long chafed under the political machinations of their publishers, quickly learned that the ideal of objectivity, though unreachable, could nevertheless inspire a more thorough and convincing presentation of their work.

It was a win-win situation, except for more-partisan news consumers, whose dissatisfaction helped fuel the post-1960 explosion of left-of-center alternative weeklies, right-of-center talk radio, and niche opinion magazines like the one you're reading. Still, the lions of journalism—major dailies, network news broadcasts, *Time* and *Newsweek*—were able to keep their turf almost totally free from the perceived poison of identifiable politics. That is, until competition cracked open the door and Rupert Murdoch rammed a bulldozer through.

Kicking a 40-year habit is a traumatic business, especially if triggered by outside interven-

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tion in the form of a brazen foreigner whose politics you despise. Murdoch, by consciously pursuing the neglected audience of conservatives with both the *New York Post* and Fox News, broke the self-congratulatory spell with which journalists had long told themselves that their own editorial choices are driven by pristine motives. He then added a facetious insult to injury by declaring the result "fair and balanced."

This is why Murdoch's News Corp., despite being a smaller company than Disney (which owns ABC), Time Warner (which owns CNN), Viacom (which owns CBS), and General Electric (which owns NBC), has been the singular object of establishment journalists' increasingly unhinged wrath. In May *Los Angeles Times* Editor-in-Chief John Carroll devoted a lecture at the University of Oregon to the topic of "the wolf in reporter's clothing: the rise of pseudo-journalism in America."

"Today, the credibility painstakingly earned by past journalists lends an unearned legitimacy to the new generation of talk show hosts," Carroll told the audience. "What we're seeing is a difference between journalism and pseudo-journalism, between journalism and propaganda. The former seeks earnestly to serve the public. The latter seeks to manipulate it."

It's important to note that Murdoch's critics are not at all wrong about one of their major gripes. Fox News *does* have a political agenda that dictates its journalistic choices. This is documented, in hilarious detail, in the MoveOn-financed documentary *OutFoxed: Rupert Murdoch's War on Journalism*, which began making the house party rounds this summer. One of the more amusing examples

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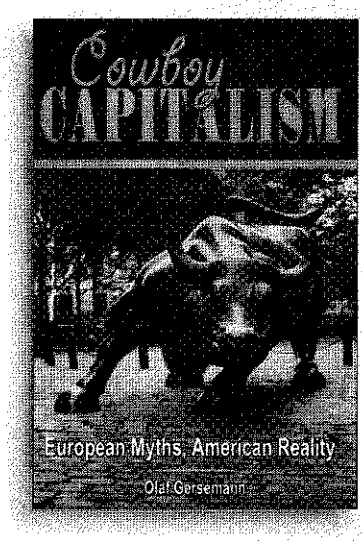

While the U.S. economy may create more growth, Europeans think they are better off when it comes to job security, income equality, and other factors. But does European-style "comfy capitalism" really deliver better results than American "cowboy capitalism"?

German reporter Olaf Gersemann checked the facts and discovered that the greater market freedoms in the United States create a more flexible, adaptable, and prosperous system than the declining welfare states of Europe. *Cowboy Capitalism* is a provocative and devastating rebuttal to the stereotypes promoted by the likes of William Greider, Paul Krugman, and Michael Moore.

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was given by former West Coast anchor Jon Du Pre, who said he was punished for failing to make the sparse attendance at a Ronald Reagan Library birthday celebration seem sufficiently "enthusiastic."

But the film's meaty middle, which consists mostly of on-air outrages and interviews with former employees who were shocked by the partisan influence on their news gathering, is bookended by rants against media consolidation that fail to recognize Murdoch's gift to his own ideological enemies: showing them that targeting a partisan audience can be a very lucrative business.

Having nonpartisan, elite news organizations staffed overwhelmingly by Democratic-leaning journalists—a recent study by the Pew Research Center for the People and the Press showed that newsroom liberals outnumber conservatives by 5 to 1 on the national level, 3 to 1 locally—creates an obvious demand for right-leaning news in the growing number of markets that enjoy competition.

During July's Democratic National Convention, for example, the *Boston Herald* sought to differentiate itself from the more staid *Globe* by bashing the bejesus out John Kerry's entire family. ("Kerry Girls Gone Wild," was one headline.) "If *The Boston Globe* hates Kerry," one *Herald* reporter told me, "then the *Herald* wants to kill his wife and decapitate his children." As *Herald* Editor Ken Chandler explained to *The New Yorker*, "Somebody's got to be the conservative paper in this town."

But newspaper liberals are significantly to the right of political lefties on issues such as free trade and military interventionism, so yet another thriving cottage industry has emerged from the ideological gap, as evidenced by the phenomenon of Michael Moore's *Fahrenheit 9/11* and the myriad pocket-sized bestsellers by the likes of Noam Chomsky and Gore Vidal. Now that it's no longer prohibitively expensive to print a book or even launch a daily newspaper, politically based competition in an evenly and passionately divided Red-Blue nation is inevitable, and it is already shaking up a news industry that had grown fat and boring.

***OutFoxed* would have you react to** this world by petitioning the Federal Communications Commission to "take back our media" (which, judging by its long and gaseous interview with former CBS anchor Walter Cronkite, perhaps means a return to 90 minutes a day of broadcast news). But the documentary's very existence suggests that a hands-off FCC—one whose relaxation of ownership restrictions allowed Murdoch to create a fourth national network in the first place—is one that will allow media activists' treasured goal of "diversity" to actually flourish. Last year in *The Atlantic Monthly* the media commentator James Fallows predicted "there will be liberal papers, radio shows, TV programs, and Web sites for liberals, and conservative ones for conservatives."

Such an environment may make journalists sweat about the future of their profession. But even the most jaded critic should recognize that fretting about a new newspaper's motives is a considerable improvement over 40 years of not having any new newspapers to complain about. ▮

Contributing Editor Matt Welch (mwelch@reason.com) writes for Canada's National Post.

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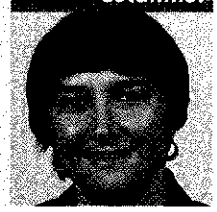

Beyond Belief

When will secularism be allowed in the public square?

When John F. Kennedy ran for President in 1960, his Roman Catholic faith was widely viewed as a stumbling block to his campaign. Many voters feared that Catholic politicians would look to the Vatican for guidance, putting their loyalty to the Church above their obligations to the American people.

Kennedy responded by reiterating his absolute commitment to the separation of church and state. In a September 1960 address to the Greater Houston Ministerial Association, he declared his belief in "an America where...no Catholic prelate would tell the president [should he be Catholic] how to act."

Fast-forward 44 years to the presidential campaign of another Catholic Democrat from Massachusetts, Sen. John Kerry. This time around, the charge is that he is *insufficiently* loyal to the Catholic Church.

In June 2004, the Los Angeles–based Catholic lawyer Mark Balestrieri filed heresy charges against Kerry with the Boston Archdiocese, asking that he be excommunicated because of his support for legal abortion. Around the same time, Pope John Paul II's doctrinal adviser, Cardinal Ratzinger, sent a memo to the U.S. Conference of Catholic Bishops stating that politicians who support abortion rights should be denied communion. Four American bishops already had said they would deny Kerry communion.

Some commentators—including several conservatives, such as *The Weekly Standard*'s Terry Eastland—noted that such tactics could backfire. But the controversy was generally seen as a liability and an embarrassment for Kerry. In his speech accepting the Democratic nomination at his party's convention in July, Kerry asserted that he did not wear his faith on his sleeve, yet much of his speech was crafted in religious terms.

Religion in politics has come a long way since 1960.

Kerry is not the first Democratic candidate to have a religion problem this campaign. The former front-runner, Howard Dean, was labeled too secular to be electable. A January 2004 cover story by Franklin Foer in *The New Republic* declared that Dean would have trouble shedding the "liberal" image—less because of his politics than because he was "one of the most secular candidates to run for president in modern history." (Dean, an Episcopalian turned Congregationalist, had openly said that he didn't go to church often and that religion didn't inform his public policy views.)

Other publications picked up on this theme. In a particularly bizarre moment, an interview with Dean by *Newsweek*'s Howard Fineman abruptly turned from various policy issues to the question, "Do you see Jesus Christ as the son of God and believe in him as the route to salvation and eternal life?"

It's hard to tell whether the meteoric fall of Dean's candidacy had anything to do with his perceived secularism—or, for that matter, with his clumsy attempt to reinvent himself as a man of faith. Nonetheless, few would disagree with Foer's statement, "One day, a truly secular candidate might be able to run for president without suffering at the polls. But that day won't be soon."

Article VI of the U.S. Constitution explicitly states that "no religious test shall ever be required as a qualification to any office or public trust." But formal tests are one thing, voter preferences another; no one can keep the people from imposing a religious litmus test on can-

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didates. Today that litmus test is not membership in a particular religion but religiosity in general—though it's hard to tell how the public would react to a Muslim or a Hindu candidate. In a 2000 Pew Research Center poll, 70 percent of Americans said that they wanted a presidential candidate to be religious.

The prominence of religion in the Bush White House makes secularist liberals profoundly nervous. Four of the six blurbs on the back of Susan Jacoby's *Freethinkers: A History of American Secularism*, published in May 2004, refer directly or indirectly to the Bush presidency—what Arthur Schlesinger Jr. called, in his blurb, "the tide of religiosity engulfing a once secular republic."

The real picture, as usual, is more complex. Indeed, Jacoby's fascinating if flawed history demonstrates that religiosity and secularism have always been competing strains in American public life. In a cyclical pattern, relatively secular periods have been followed by religious upsurges.

There is no question that religion and politics are entangled today in ways that would have been unthinkable in 1960. But blaming this solely on the right is disingenuous. Jimmy Carter was the first modern president to wear his faith on his sleeve. In 2000 Al Gore claimed that "What would Jesus do?" was his guide to making policy, while his running mate, Joe Lieberman, talked of renewing "the dedication of our nation and ourselves to God and God's purpose."

Critics of Christian conservatives are often blind to it, but religion and politics mix freely on the left as well as the right, from Quaker peace activism to the role black churches play in mobilizing the African-American vote. Last April, in a review of *The Jesus Factor*, a PBS program about the role of Bush's evangelical faith in his presidency, *Salon* critic Charles Taylor stated with startlingly unself-conscious candor that the scary thing about Bush was not that he injected his faith into politics, but that he was using it to promote a right-wing rather than left-wing agenda—in Taylor's words, to serve narrow constituencies rather than a "legitimate civil interest" such as raising taxes on the rich.

Given the liberal intelligentsia's high tolerance for the use of traditional religion in progressive causes,

Religion and politics are entangled today in ways that would have been unthinkable in 1960.

it's not surprising that hardly anyone questions the political influence of Earth-worshipping environmentalism, which novelist Michael Crichton has called "the religion of choice for urban atheists." This environmentalist "spirituality" pervades Gore's 1992 book *Earth in the Balance*.

There is some truth to the conservative claim that liberal hand wringing about the intrusion of faith into politics often smacks of politically correct bigotry. The war in Iraq and the War on Terror were widely portrayed as a part of Bush's religiously inspired crusade against "evildoers." Many Bush critics, from British political commentator Rupert Cornwell in *The Independent* to Jim Wallis of the liberal evangelical magazine *Sojourners*, have even decried his use of the word *evil*, in reference to people who crash airplanes into buildings, as evidence of religious fanaticism.

Yet the faith-based presidency is genuinely troubling. This is not only because of the public policies justified by invoking God's name. No less important is the symbolic message that one must be religious in order to be a part of the body politic—in order, perhaps, to be a "real" American. It's a message that goes hand in hand with a good deal of secularist bashing and particularly atheist bashing: In some of the Republican attacks on Democratic financier George Soros, *atheist* was used as a term of opprobrium.

The public's views on this subject are more complex than the champions of religion in the public square often make them out to be. For instance, a recent *Time* poll found likely voters evenly divided on the question of whether the president should allow his personal faith to be his guide in making political decisions. The vast majority of Americans consider themselves religious, but about a third do not consider religion very important in their lives and attend religious services once a month or less. That's a pretty large segment of the population to reduce to the status of political pariahs.

The idea that politicians should keep their religious faith private may seem outrageously intolerant. But is it not equally outrageous that, on today's political scene, a secularist figure cannot express his views honestly without committing career suicide? Unlikely though it is to happen, a moratorium on God talk might level the playing field. ▮

Contributing Editor Cathy Young (CathyYoung1@cs.com) is a columnist for The Boston Globe.

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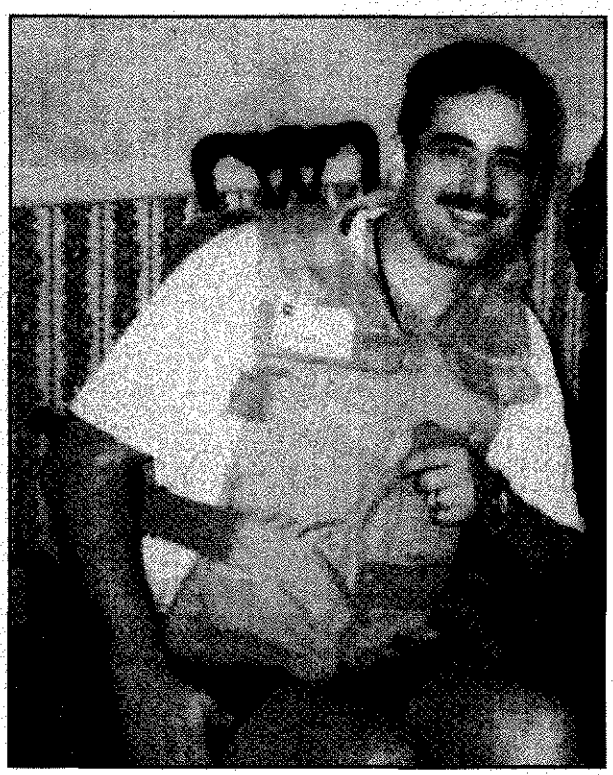
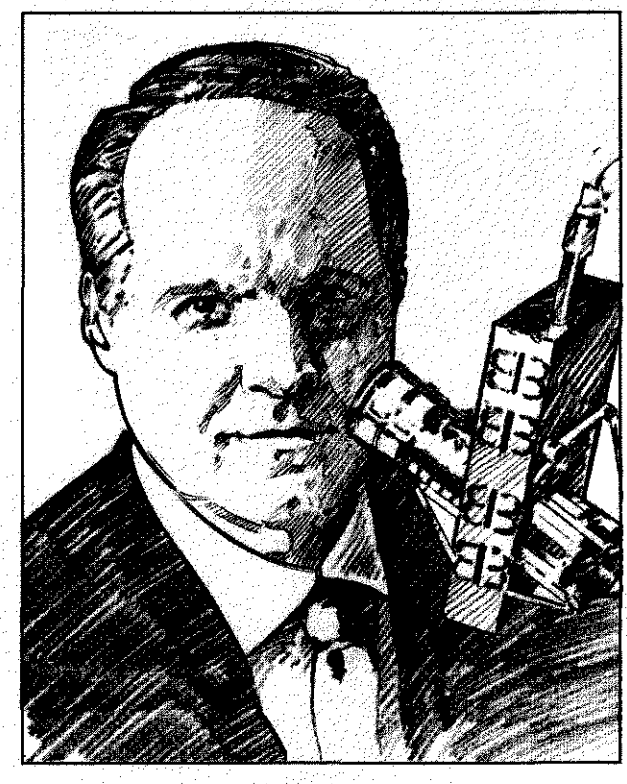
JUSTICE FOR ALL?



Richard Paey

25 YEARS

As Richard Paey sits in his cell, wheelchair bound, a subdermal pump delivers a steady flow of morphine to kill the back pain from a 1985 car crash. The 45-year-old father of three used to handle the pain with prescription narcotics, but when he moved to Florida he couldn't find a doctor willing to prescribe the appropriate amount of medication. They feared a loss of license or even prison. Like so many others, Paey was forced to use questionable prescriptions and got arrested. He refused to be forced into treatment for addiction because he's a legitimate pain patient. Now the state is providing his narcotics, along with room and board, at a cost to the taxpayers of perhaps $80,000 a year.



Rush Limbaugh

TREATMENT

When Florida narcotics officers busted talk show host Rush Limbaugh for buying large quantities of Oxycontin and other narcotics on the black market, he checked himself into a treatment center. After five weeks of rehab, he is back on the air. Mr. Limbaugh's illegal drug buys, over 90 pills a day at one point, make Richard Paey's pale by comparision. And while Mr. Limbaugh's use of narcotics began with severe back pain, he continued using long after the pain was gone. To catch addicts like Mr. Limbaugh, the government is targeting doctors, and the doctors are becoming so gun-shy they don't want to risk dealing with chronic pain patients at all.

"Write a prescription, go to jail. Doctors get sued for overtreating pain, for undertreating pain...and they can get prosecuted for the overdoses of patients."
-Roanoke Times, 23 May 2004

NEITHER SHOULD BE PUT IN PRISON.

Pain patients and addicts need medical help, not confinement

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Orange You Glad He Didn't Say *Red*?

The president's credibility problem

When Secretary of Homeland Security Tom Ridge upped the terrorist threat level in the New York and Washington, D.C., areas from yellow to orange in August, the response from prominent Democrats was more predictable than a Zarqawi videogram.

Washed-out presidential candidate Howard Dean attacked the Bush administration for politicizing the war on terror. Why was it, groused the Green Mountain Screamer, that whenever the president has a bum week (or John Kerry has a good one), he jacks the rainbow up a hue? "I am concerned that every time something happens that's not good for President Bush, he plays this trump card—which is terrorism," said Dean.

However unfounded Dean's accusation was, Ridge's response on August 3 was equally dubious. "We don't do politics in the Department of Homeland Security," he said. Of course you don't, Tom. After all, you're a political appointee in a presidential administration during an election year. *Politics* is the last thing on your mind. And you weren't playing politics on August 1, when you insisted that "we must understand that the kind of information available to us today is the result of the president's leadership in the war against terror." Nope, you're the Officer Joe Friday of counterterrorism, a just-the-facts guy who somehow neglected to note that the intel which led to the new alert was several years old.

This isn't to say that the warning was in fact sent out to goose Bush's poll numbers. But it's totally plausible to wonder if, how, and when terror alerts are being politicized. And that plausibility underscores an often-overlooked problem in fighting the war on terror: The public has a justifiably cynical attitude toward all sorts of government proclamations, especially those emanating from 1600 Pennsylvania Avenue.

In its current form, this national skepticism goes back to Lyndon Johnson's credibility gap on everything from how well he treated dogs at home to how well he treated dog soldiers in Vietnam. Then there was Richard Nixon, with his "secret plan" to end the war in Southeast Asia, his secret bombings of same, Watergate, and his insistence that he wasn't a crook. Gerald Ford's pardon of Tricky Dick stunk to high heaven of a different sort of secret plan, and Jimmy Carter's claims of doing battle with killer rabbits hardly restored confidence in presidential truth telling.

Ronald Reagan had more than a few credibility problems (e.g., asserting that ketchup was a vegetable, everyone loved jelly beans, and he would never trade arms for hostages). More to the point, he (legitimately) buttonholed government as the "problem"—a shtick that helped him take control of the very institution whose credibility he undermined. Poppy Bush patently dissembled on Iran-Contra and, more notoriously, his no-new-taxes pledge. Then there was Bill Clinton. To confine it to terrorism: Does anyone really believe that the precise timing of Slick Willie's air strikes on Al Qaeda camps in Sudan and Afghanistan, which took place the evening before Monica Lewinsky's 1998 grand jury testimony, was purely coincidental?

And what about George W. Bush, whose election was almost undone by a last-minute revelation of a long-hidden drunk driving arrest? His administration's penchant for secrecy and the undermining of virtually all of the pre-war intelligence don't help him seem like a politics-free sort of guy. Neither does his half-assed capitulation to the 9/11 commission's recommendations about reorganizing U.S. intelligence operations (he has pledged to create a powerless new head of intelligence).

Given that Bush is president in no small part due to the anti-government rhetoric that the GOP has mastered during the last 25 years, it's more than a little ironic—and scary for the rest of us—that skepticism toward the chief executive may make it harder for him to prosecute effectively the war on terror.

But trust is easy to lose and hard to earn. It's harder still to keep. And the last 40 years of presidential pronouncements haven't made that any easier. ■

Editor-in-Chief Nick Gillespie is the editor of Choice: The Best of Reason (BenBella Books).

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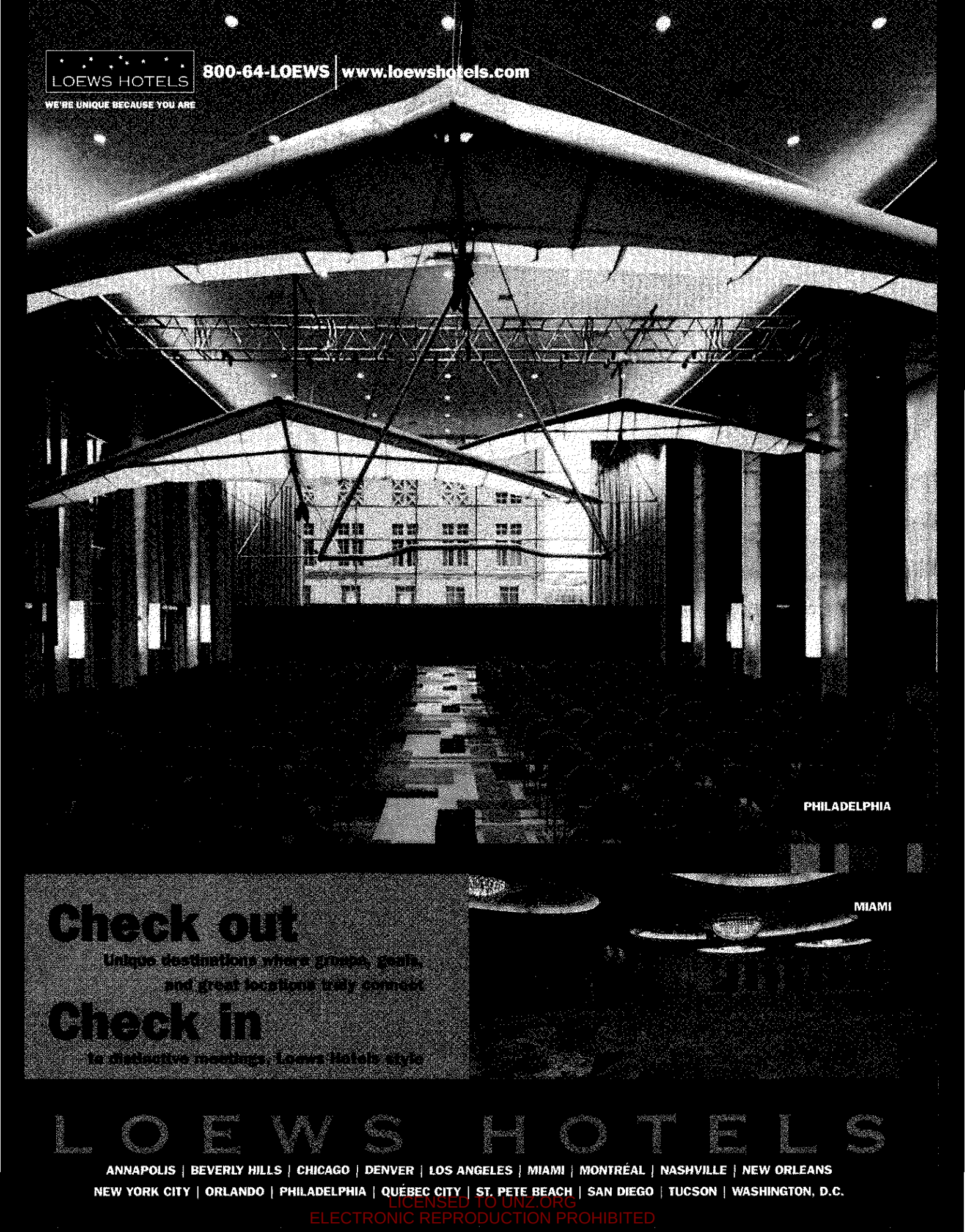
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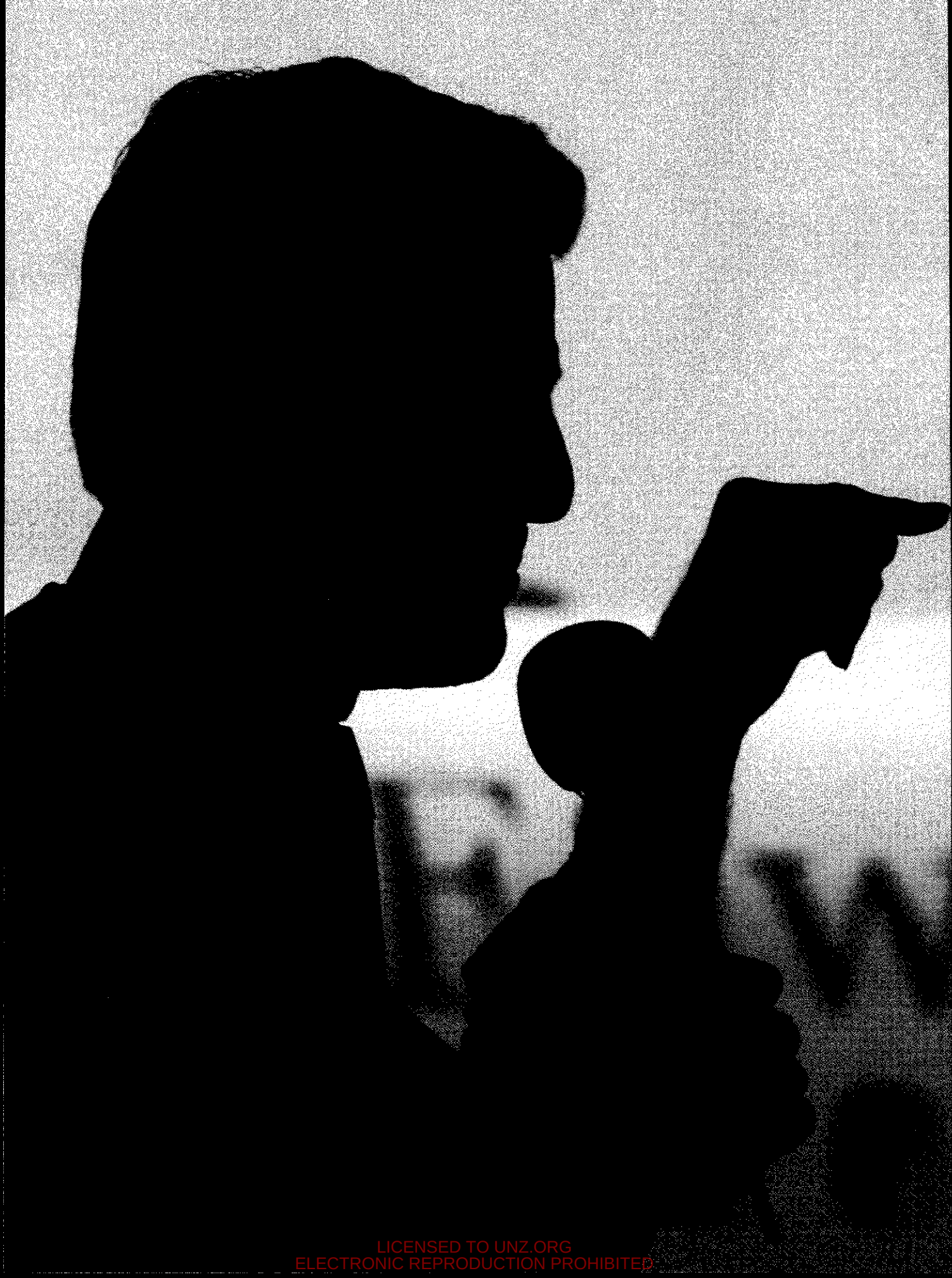

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John Kerry's Dark Record on Civil Liberties

The Democratic candidate is no friend to the Bill of Rights.

John Berlau

For John Kerry, the specter of Attorney General John Ashcroft trashing Americans' civil liberties has been a useful campaign prop. In campaign stops, Kerry has promised to "end the era of John Ashcroft and renew our faith in the Constitution." In a Kerry administration, he promised the liberal group MoveOn last year, "there will be no John Ashcroft trampling on the Bill of Rights." In his 2004 campaign book, *A Call to Service*, Kerry accuses Ashcroft and the Bush administration of "relying far too much on extraordinary police powers."

In contrast, Kerry positions himself as a civil libertarian—or at least as a proponent of a reasonable balance between liberty and security. "If we are to stand as the world's role model for freedom, we need to remain vigilant about our own civil liberties," Kerry writes in *A Call to Service*. He calls for "rededicating ourselves to protecting civil liberties."

John Kerry at a Ft. Lauderdale rally, July 2004. ©Marc Serota/Reuters

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Kerry, like every other senator in the chamber except Russell Feingold (D-Wis.), voted for the USA PATRIOT Act in the wake of 9/11. Now he is co-sponsoring the SAFE Act, a bipartisan measure that restricts some of the powers that the PATRIOT Act granted the government. Furthermore, he is critical of the package of proposals from Ashcroft's Department of Justice (DOJ) that has been dubbed Patriot II. Citing his experience as a prosecutor—he was an assistant district attorney in suburban Boston in the '70s—Kerry writes, "I know there's a big difference between giving the government the resources and commonsense leeway it needs to track a tough and devious foe and giving in to the temptation of taking shortcuts that will sacrifice liberties cheaply without significantly enhancing the effectiveness of law enforcement. Patriot II threatens to cross that line—and to a serious degree."

Sacrificing Personal Privacy

This isn't the first time Kerry and Ashcroft have been at odds over civil liberties. In the 1990s, government proposals to restrict encryption inspired a national debate. Then as now, the American Civil Liberties Union (ACLU) and electronic privacy groups locked horns with the DOJ and law enforcement agencies. Then as now, Kerry and Ashcroft were on opposite sides.

But there was a noteworthy difference in those days. Then it was Sen. John Ashcroft (R-Mo.) who argued alongside the ACLU in favor of the individual's right to encrypt messages and export encryption software. Ashcroft "was kind of the go-to guy for all of us on the Republican side of the Senate," recalls David Sobel, general counsel of the Electronic Privacy Information Center.

And in what now seems like a bizarre parallel universe, it was John Kerry who was on the side of the FBI, the National Security Agency (NSA), and the DOJ. Ashcroft's predecessor at the Justice Department, Janet Reno, wanted to force companies to create a "clipper chip" for the government—a chip that could "unlock" the encryption codes individuals use to keep their messages private. When that wouldn't fly in Congress, the DOJ pushed for a "key escrow" system in which a third-party agency would have a "backdoor" key to read encrypted messages.

In the meantime, the Clinton administration classified virtually all encryption devices as "munitions" that were banned from export, putting American business at a disadvantage. In 1997 Senate Commerce Committee Chairman John McCain (R-Ariz.) pushed the Secure Public Networks Act through his committee. This bill would have codified the administration's export ban and started a key escrow system. One of his original co-sponsors was his fellow Vietnam vet and good friend from across the aisle, John Kerry.

Proponents such as McCain and Kerry claimed that law enforcement could not get the key from any third-party agency without a court order. Critics responded that there were loopholes in the law, that it opened the door to abuses, and that it punished a technology rather than wrongdoers who used that technology. Some opponents argued that the idea was equivalent to giving the government an electronic key to everyone's home. "To date, we have heard a great deal about the needs of law enforcement and not enough about the privacy needs of the rest of us," said then-Sen. Ashcroft in a 1997 speech to the Computer and Communications Industry Association. "While we need to revise our laws to reflect the digital age, one thing that does not need revision is the Fourth Amendment....Now, more than ever, we must protect citizens' privacy from the excesses of an arrogant, overly powerful government."

But John Kerry would have none of this. He had just written *The New War: The Web of Crime That Threatens America's Security*, a book about the threat of transnational criminal organizations, and he was singing a different tune on civil liberties. Responding directly to a column in *Wired* on encryption that said "trusting the government with your privacy is like having a Peeping Tom install your window blinds," Kerry invoked the Americans killed in the 1993 bombing of the World Trade Center and the 1995 bombing of the Alfred P. Murrah Building in Oklahoma City. "[O]ne would be hard-pressed," he wrote, "to find a single grieving relative of those killed in the bombings of the World Trade Center in New York or the federal building in Oklahoma City who would not have gladly sacrificed a measure of personal privacy if it could have saved a loved one."

Change a few words, and the passage could easily fit into Attorney General Ashcroft's infamous speech to the Senate Judiciary Committee in late 2001—the one where he declared, "To those who scare peace-loving people with phantoms of lost liberties, my message is this: Your

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Kerry thought U.S. asset forfeiture laws were working so well that he wanted to export them. He wrote, "In the words of one plainspoken lawman, 'Get their ass and get their assets.'" There was no discussion at all of civil liberties issues.

tactics only aid terrorists—for they erode our national unity and diminish our resolve."

If Ashcroft was encryption advocates' go-to guy on the GOP side in the encryption debate, Kerry played that role for law enforcement among the Democrats. "John Kerry was always a pretty strong proponent of law enforcement and the military, and the NSA was not terribly crypto-friendly, and the FBI was extremely uncrypto-friendly," says Will Rodger, who covered the encryption debate for *USA Today* and is now public policy director at the Computer and Communications Industry Association. "John Kerry's support for limiting encryption wasn't a real shock to most people who had followed his voting record."

Eventually, the strength of the business and civil liberties opposition—plus the sheer impossibility of keeping up with encryption technology—led the Clinton administration and Kerry to accept relaxed encryption controls. Today it seems laughable that software would ever have been labeled as "munitions"; even Ashcroft's DOJ did not try to include a key escrow system in the PATRIOT Act.

"Get Their Ass and Get Their Assets"

The Bush administration is not likely to point out Kerry's position in favor of encryption control, because it is trying to paint him as soft on crime and terrorism. Kerry does hold many traditionally liberal views on crime, including a consistent opposition to the death penalty. But encryption was just one of many issues in Kerry's Senate career where he and civil libertarians were on opposite sides. And while Kerry is in some respects singing a different tune today on civil liberties, he has never walked away from his statements in *The New War*. In fact, he displays the book in an ad that began running in late June as evidence that he authored an antiterrorism strategy way back in the late '90s.

Although the encryption fight appears to be over, similar battles are being fought today. For instance, as with encryption, the FBI now wants preemptive design mandates so it can have an automatic mechanism to tap into Voice over Internet Protocol, the fledgling technology that allows people to make phone calls online. Once again, law enforcement wants tech firms to build a "back door" for the police. Wayne Crews, director of technology studies at the pro-market Competitive Enterprise Institute, notes that Kerry has been silent on the FBI's efforts. "The only thing I've heard from Kerry on technology regulation is continued investment from the federal government," Crews says.

This isn't the only issue that could be worrisome for civil libertarians, given Kerry's record in the '90s. In general, whenever the ACLU was aligned with business interests, Kerry took the side of law enforcement against what he called "big money."

An example is the fight over asset forfeiture. In the 1980s war on drugs, the laws were stretched so that property that had been used for criminal purposes could be seized by law enforcement even if the owner of that property was innocent. If a drug dealer rode in your car or your airplane, for example, it was subject to seizure, and you would have to sue to get it back by proving you had no knowledge that a dealer had used it for illicit purposes. This was the case even if you had never been charged with any crime. The resale of impounded property became a source of revenue—and corruption—for local police departments. Even in cases where there were actual criminal convictions, governments would often seize assets that were not related to the crime or to compensating victims.

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Critics on the left and right worried about overreach from the "Know Your Customer" regulations which would have required banks to monitor all transactions. John Kerry worried that the regulations did not go far *enough*.

In the mid-1990s, a bipartisan movement arose to reform the forfeiture laws, with conservative Republican Reps. Henry Hyde of Illinois and Bob Barr of Georgia joining with such liberal Democrats as Reps. John Conyers of Michigan and Barney Frank of Massachusetts. They wanted to increase the burden of proof on the government when it seized property. As with encryption, there was stiff opposition to reform from Janet Reno's Justice Department.

What was Kerry's position? He thought U.S. asset forfeiture laws were working so well that he wanted to export them. "We absolutely must push for asset forfeiture laws all over the planet," Kerry wrote in *The New War*. "In the words of one plainspoken lawman, 'Get their ass and get their assets.'" There was, tellingly, no discussion at all of civil liberties issues.

Kerry added that we can't reasonably expect another country "to assist us in our struggle with crime if it does not see direct benefit for itself, especially if it is among the countries with highly limited funds for law enforcement." It didn't seem to occur to Kerry that, without safeguards, countries "with highly limited funds" might go after the assets of innocent people or third parties with only a tangential relationship to the criminal. Indeed, the only "dark and dangerous underside" of international forfeiture he identified was the possibility that criminals would give up assets in exchange for avoiding jail sentences. "We must ensure that asset forfeitures do not become a substitute for serving time," he wrote. (In 2000, after being watered down by the Reno Justice Department, the Civil Asset Forfeiture Reform Act passed the Senate by a voice vote and was signed into law by Clinton. Kerry did not object on the Senate floor; neither did Sen. Ashcroft.)

Know Your Candidate

Even a semi-sympathetic review in the liberal *Washington Monthly* called *The New War* "a kind of international edition of *Reefer Madness*," referring to the notoriously overwrought anti-drug movie of the 1930s. Kerry is an avid drug warrior, and after having discovered some genuine instances of bad guys' stashing their money at the $23 billion Bank of Credit and Commerce International, an international financial institution that was shut down in 1991 by various countries' bank regulators, he became a crusader against banks holding "dirty money." (BCCI had dealings with drug lords, Saddam Hussein, the PLO, and the KGB.) While it may be too much to ask a major-party presidential candidate to ponder drug prohibition's contribution to dirty money, Kerry's solution to money laundering was—and is—to deputize banks and force them to spy on all their customers.

Many on the left and right worried about overreach from the federal "Know Your Customer" regulations of 1997–98, which would have required banks to monitor every customer's "normal and expected transactions." Those proposed rules were eventually withdrawn after the ACLU, the Libertarian Party, and other groups generated more than 100,000 comments in opposition. But from his writings and statements, John Kerry seemed worried that the regulations did not go far *enough*. "If the standards by which banks accept money were lived up to with the same diligence as that by which most banks lend money, the 'know your customer' maxim would have teeth," he wrote in *The New War*. "But too many bankers pretend they are doing all they can to know what money crosses their threshold and pretend they are not as key as they are to law-enforcement efforts."

Kerry then expressed his belief that bank

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customers are entitled to essentially zero privacy. "The technology is already available to monitor *all* electronic money transfers," he wrote (emphasis added). "We need the will to make sure it is put in place."

Has a politician who seven years ago proposed all electronic transfers be monitored changed his views on civil liberties? That's the question I asked officials at Kerry's Senate office and presidential campaign. He promised to have someone answer questions about his civil liberties positions, but as of press time no one has responded to my calls. A close look at Kerry's statements on the PATRIOT Act, however, reveals that there is less to his opposition than meets the eye.

The Real Problem Is the Law

As noted above, Kerry is co-sponsoring the SAFE Act, which would limit the circumstances under which "sneak-and-peek" warrants can be issued under the PATRIOT Act. (PATRIOT broadened the government's power to conduct such searches, in which the person whose property is examined is not notified.) It also puts some brakes on PATRIOT provisions that give the FBI the power to search records on individuals held by third parties—such as libraries, bookstores, and Internet service providers—and the power to require the third parties to keep silent about the search.

But Kerry signed onto the SAFE Act only after his right flank was protected; the bill's original co-sponsors included conservative Sens. Larry Craig (R-Idaho) and Lisa Murkowski (R-Alaska) as well as Feingold. More tellingly, Kerry's support is premised on what he calls Ashcroft's abuses of the PATRIOT Act, not on PATRIOT itself. "John Kerry stands by his vote for the Patriot Act," says a March 11 campaign statement. "You can sum up the problems with the Patriot Act in two words: John Ashcroft....The real problem with the Patriot Act is not the law, but the abuse of the law."

In fact, the "real problem" is the law's provisions, which would be troubling in any administration. Responding to Kerry's statement, Gregory T. Nojeim, associate director of the ACLU's Washington National Office, says, "People from the left to the right agree that John Ashcroft is no civil liberties angel, but the problems of sneak-and-peek warrants and an overbroad notion of what constitutes terrorism are dangerous in the hands of any attorney general." Nojeim observes that the definition of terrorism is so broad that it could cover groups practicing civil disobedience, such as the anti-abortion Operation Rescue.

Meanwhile, Kerry continues to support intrusive efforts to stamp out money laundering. His campaign statement points out that Kerry "authored most of the money laundering provisions" in PATRIOT. Those provisions were largely based on an old money laundering bill that Kerry had introduced and which was opposed by economic conservatives and the ACLU. Kerry and other Democrats insisted that the money laundering provisions be attached to the PATRIOT Act. An October 2001 Associated Press article quoted Kerry as accusing Republicans of trying to remove the provisions "by fiat." The article noted that Kerry "underlined the political influence of Texas bankers."

The money laundering provisions, which became Title III of the PATRIOT Act, are some of the most privacy-threatening aspects of the bill. (See "Show Us Your Money," November 2003.) They go beyond the "Know Your Customer" rules of the late 1990s, bringing real estate brokers, travel agents, auto dealers, and various other businesses under the rubric of "financial institutions" that must monitor their customers and file "suspicious activity reports" on deviations from customers' normal patterns.

It was the Title III money laundering provisions that the FBI used in the much-criticized Operation G-String, an investigation of a strip club owner in Las Vegas accused of bribing local officials. The case had nothing to do with terrorism. Kerry—whose provisions allowed it to happen—has not cited this operation as one of Ashcroft's abuses, even though other Democrats have.

We have been told repeatedly that the world has changed since 9/11. Indeed, that is the explanation many have offered for Ashcroft's change of heart on civil liberties. But what about a candidate who, well before 9/11, consistently advocated measures that would have eroded those liberties? Would he be more or less constrained in the middle of a war on terror? To raise the issue is to take Kerry's own advice from his new book—that we "remain vigilant about our own civil liberties." ▩

John Berlau (civeconlib@aol.com) writes for Insight (InsightMag.com).

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Ten Reasons to Fire George W. Bush (and nine reasons why Kerry won't be much better)

Jesse Walker

Indefinite detentions. Since 9/11, the U.S. government has imprisoned more than 1,000 people for minor violations of immigration law and held them indefinitely, sometimes without allowing them to consult a lawyer, even after concluding that they have no connections to terrorist activities. (Sirak Gebremichael of Ethiopia, to give a recently infamous example, was arrested for overstaying his visa–and then jailed for three years while awaiting deportation.) The Bush administration also has claimed the right to detain anyone designated an "enemy combatant" in a legal no man's land for as long as it pleases, although the Supreme Court finally put some restrictions on that particular practice.

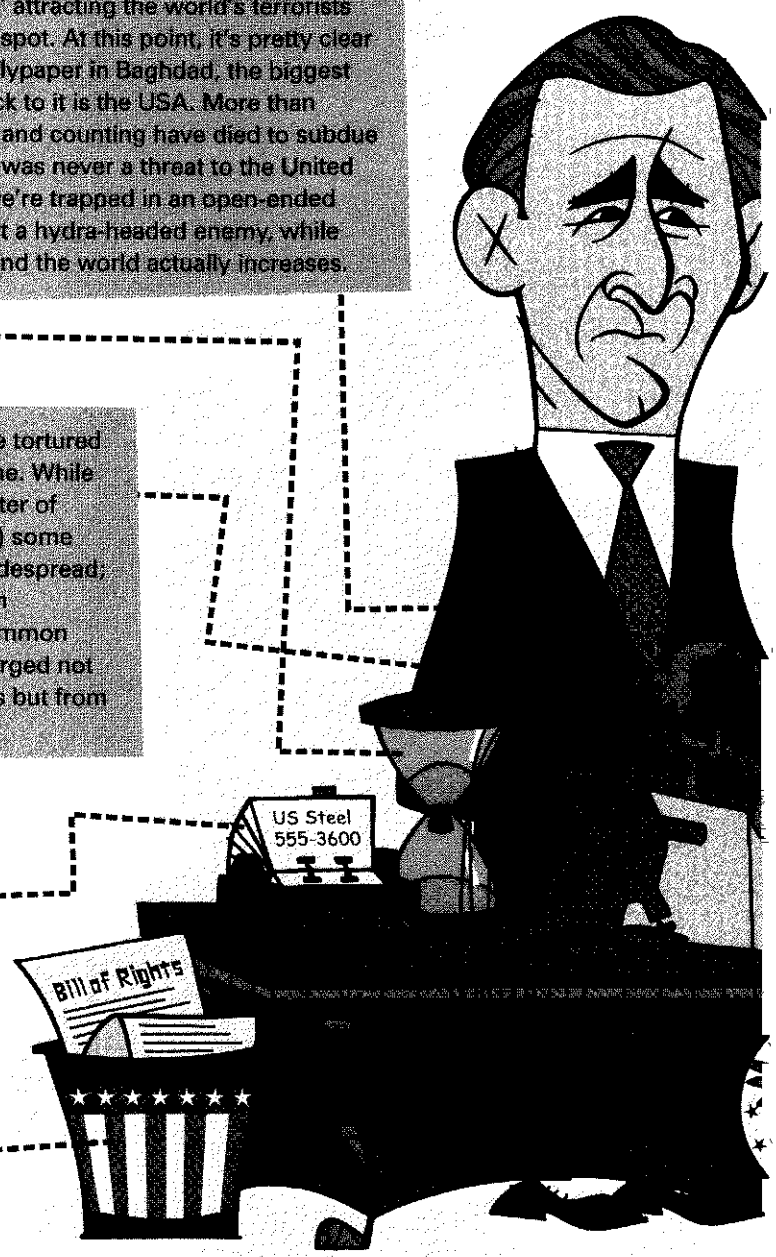
The war on speech. In March 2002, Bush signed the McCain-Feingold campaign finance reform bill. Its restrictions on political speech in the months approaching an election are so broad they've forced filmmaker David T. Hardy to delay the release of his documentary *The Rights of the People* until after November because it mentions several candidates. That's not to say the government hasn't done anything to increase the amount of political speech: Its ham-handed crackdown on "indecent" broadcasts–an effort that is to the cultural realm what McCain-Feingold is to the political sector–has turned Howard Stern into Michael Moore.

The war in Iraq. One of the silliest arguments for the invasion of Iraq held that our presence was "flypaper" attracting the world's terrorists to one distant spot. At this point, it's pretty clear that if there's flypaper in Baghdad, the biggest bug that's stuck to it is the USA. More than 1,000 soldiers and counting have died to subdue a country that was never a threat to the United States. Now we're trapped in an open-ended conflict against a hydra-headed enemy, while terrorism around the world actually increases.

Abu Ghraib. Meaning *all* the places where Americans have tortured detainees, not just the prison that gave the scandal its name. While there are still people who claim that this was merely a matter of seven poorly supervised soldiers "abusing" (not torturing!) some terrorists, it's clear now that the abuse was much more widespread; that it included rapes, beatings, and killings; that the prison population consisted overwhelmingly of innocents and common criminals, not terrorists; and that the torture probably emerged not from the unsupervised behavior of some low-level soldiers but from policies set at the top of the Bush administration.

Protectionism in all its flavors. Bush has repeatedly sacrificed the interests of consumers to help politically significant industries, giving us tariffs on products from steel to shrimp.

The PATRIOT Act. It allows warrantless searches of phone and Internet records. It gives police the right to see what you've been reading, while prohibiting the library or bookstore from telling you about the inquiry. It requires retailers to report "suspicious" transactions and, again, prevents them from telling you. And apparently it isn't enough: The Justice Department has another set of proposals nicknamed "PATRIOT II."



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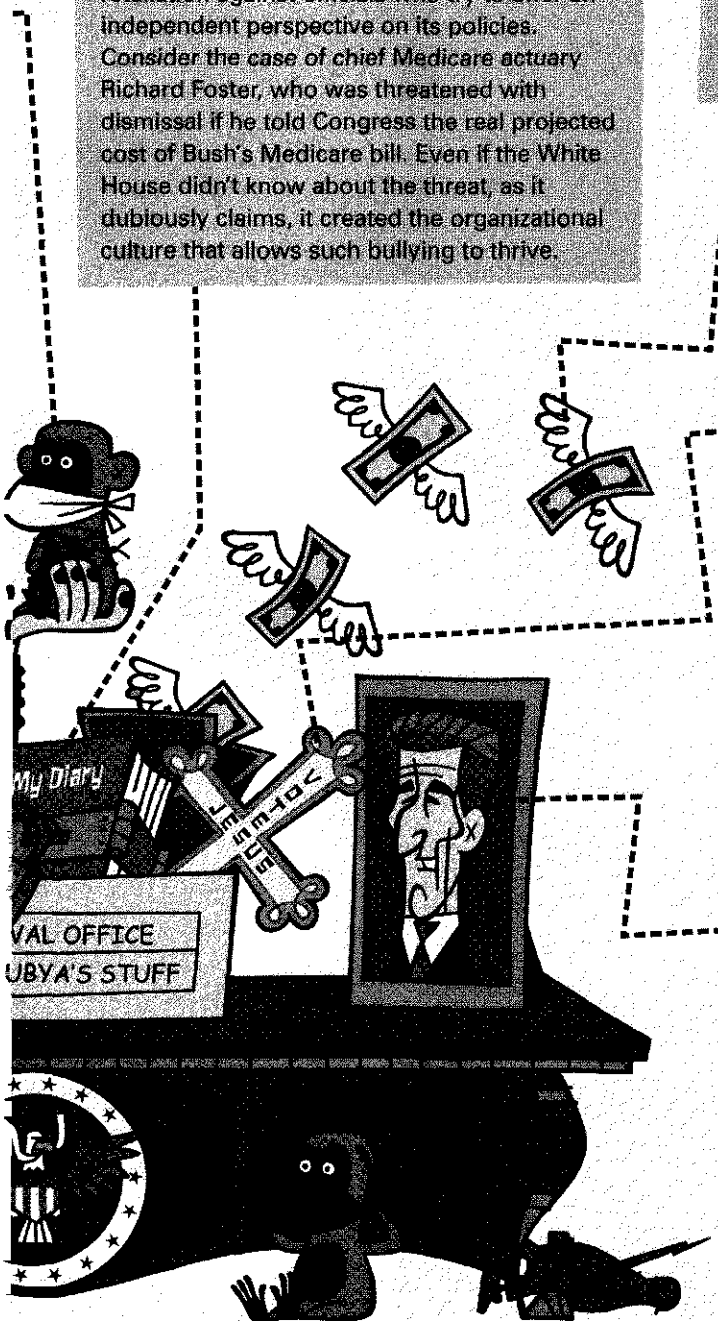
The culture of secrecy. The Bush administration has nearly doubled the number of classified documents. It has urged agencies to refuse as many Freedom of Information Act requests as possible, has invoked executive privilege whenever it can, and has been free with the redactor's black marker when it does release information. It's impossible to tell how often the secrecy is genuinely relevant to national security and how often it has more to do with covering a bureaucrat's behind. But there's obviously a lot of ass covering going on, including the administration's regular retaliation against officials who try to offer an independent perspective on its policies. Consider the case of chief Medicare actuary Richard Foster, who was threatened with dismissal if he told Congress the real projected cost of Bush's Medicare bill. Even if the White House didn't know about the threat, as it dubiously claims, it created the organizational culture that allows such bullying to thrive.

The drunken sailor factor. Since Bush took office, federal spending has shot up at the fastest rate in three decades, increasing by over $400 billion. Even if you set aside the Pentagon budget, he's doling out dollars like crazy: Under Bush, domestic discretionary spending has already gone up 25 percent. (Clinton increased it by only 10 percent, and it took him eight years to do that.) Bush's Medicare bill deserves special attention. It will cost at least $534 billion during the next decade. And it doesn't even deliver on its liberal promises: It does much more to distribute new subsidies and tax breaks to doctors, HMOs, and the pharmaceutical industry than it does to help seniors. The Medicare bill is to Bush's domestic policy what the Iraq war is to its foreign policy: an enormous expense of dubious merit that's come under fire from both the left and the right.

Cozying up to the theocrats. There are those who believe the White House is being run by fundamentalist fanatics, and there are those who believe it's mostly paying lip service to Bush's Christian base. But whether he's cynical or sincere, there's nothing good to be said for the president's willingness to demagogue the gay marriage issue, or to let religious fears guide federal policy toward potentially life-saving research into therapeutic cloning.



Terry Colon

He makes JOHN KERRY look attractive. The Democrats have nominated a senator who–just sticking to the points listed here–voted *for* the war in Iraq, the PATRIOT Act, and McCain-Feingold; endorses the assault on "indecency"; and thinks the government should be spending *even more*. There wasn't room here to mention the Transportation Security Administration or Bush's terrible No Child Left Behind Act; but for the record, Kerry voted for those too. It's far from clear that he'd be any less protectionist than the president is, and he has problems Bush doesn't have, such as his support for stricter gun controls. True, Kerry doesn't owe anything to the religious right, and you can't blame him for the torture at Abu Ghraib. Other than that, he's not much of an improvement.

But dammit, the guy had better win–not because he'll be any better than the current executive, but because the incumbent so richly deserves to be punished at the polls. Even if we can't bring ourselves to vote for him, a bunch of us libertarians will be rooting for the Democrat on Election Day, and that's bad enough. Making us pull for a sanctimonious statist blowhard like Kerry isn't the worst thing Bush has done to the country. But it's the offense we take most personally.

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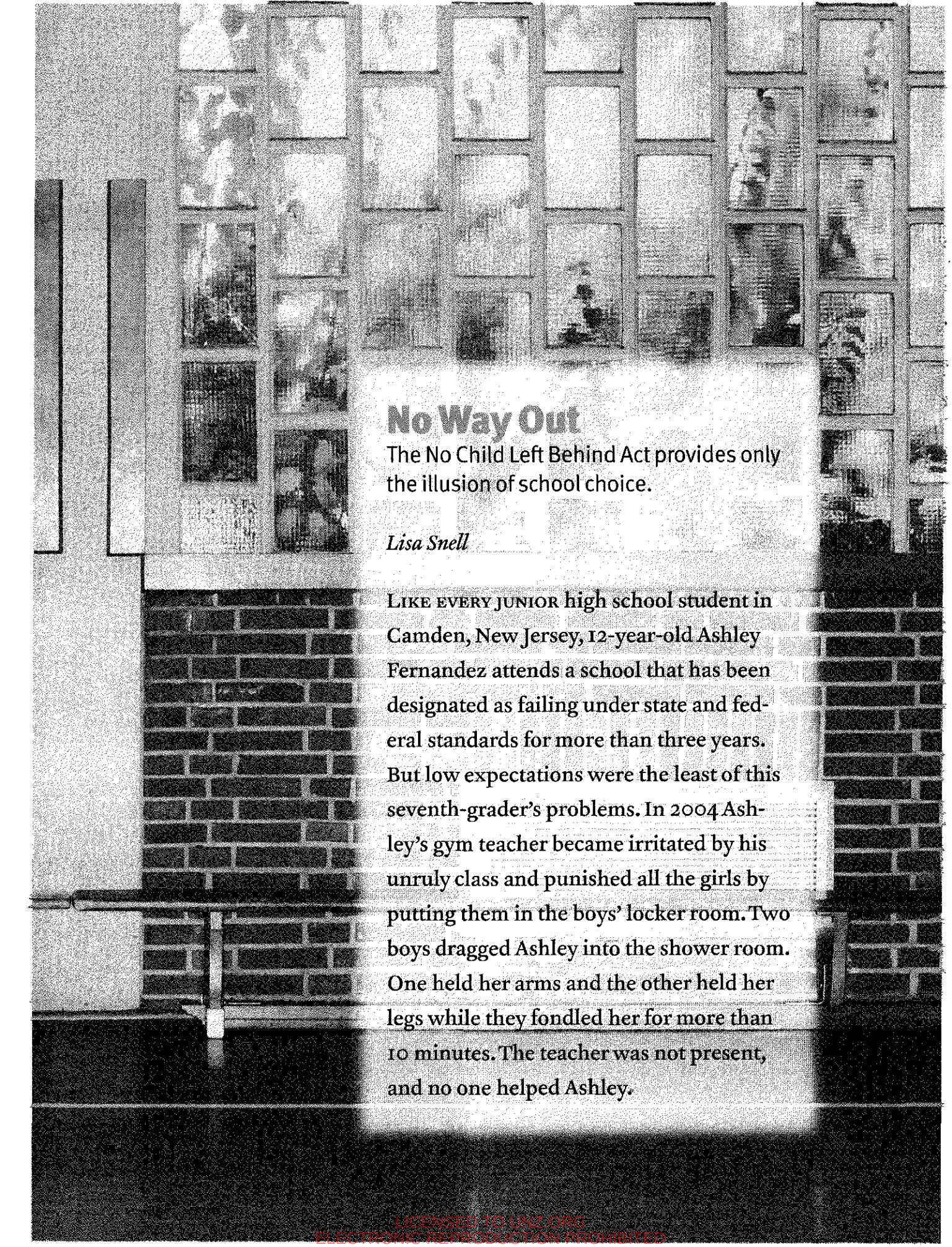

No Way Out

The No Child Left Behind Act provides only the illusion of school choice.

Lisa Snell

LIKE EVERY JUNIOR high school student in Camden, New Jersey, 12-year-old Ashley Fernandez attends a school that has been designated as failing under state and federal standards for more than three years. But low expectations were the least of this seventh-grader's problems. In 2004 Ashley's gym teacher became irritated by his unruly class and punished all the girls by putting them in the boys' locker room. Two boys dragged Ashley into the shower room. One held her arms and the other held her legs while they fondled her for more than 10 minutes. The teacher was not present, and no one helped Ashley.

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Ashley's principal, who has refused to acknowledge the assault, denied her a transfer out of Morgan Village Middle School. Since the gym incident, Ashley has received numerous threats, including repeated confrontations with male students who grab her and then run away. When Ashley's mother began keeping her home from school, she got a court summons for allowing truancy.

Ashley is not alone. Last year Carmen Santana's grandson Abraham was afraid to go to his classes at Camden High School after two boys hit him in the face, broke his nose, and chipped his teeth. Santana was also charged with allowing truancy while she sought permission for Abraham to complete his senior year studies at home.

In 2004 Samet Kieng was almost killed at Camden's Woodrow Wilson High School after refusing to give up his chemistry class stool to a latecomer. According to a *Philadelphia Inquirer* story based on Samet's account, "his assailant, who outweighs him by about 60 pounds, typically arrived late for chemistry class and demanded Kieng's seat. Kieng was studying for the state's high school proficiency exam and refused to move. Kieng said he was surprised when the student confronted him later in the locker room." He was beaten by at least four students. Samet could transfer to the other public high school in Camden, but it is officially designated as "persistently dangerous."

In all, more than 100 parents have removed their children from Camden schools because of safety concerns. The school district's response: a truancy crackdown.

This situation is exactly the sort of problem that George W. Bush's much-ballyhooed No Child Left Behind Act (NCLB) was supposed to address. As the president said in a January 2001 press conference introducing the law, "American children must not be left in persistently dangerous or failing schools. When schools do not teach and will not change, parents and students must have other meaningful options. And when children or teenagers go to school afraid of being threatened or attacked or worse, our society must make it clear it's the ultimate betrayal of adult responsibility."

previous page: Boy sitting alone in gymnasium, © CORBIS
this page: Ivelisse Fernandez (right) discusses the sexual harassment of her daughter As Jan © Ap/ S.a' ' ' /Courier Post

NCLB was supposed to rescue kids like Ashley, Abraham, and Samet. The legislation was passed in December 2001 by a bipartisan coalition led by President Bush and Sen. Ted Kennedy (D-Mass.). Its central components include annual math and reading tests for students in grades 3 to 8 based on state standards; parent-friendly report cards with assessment results broken out by poverty, race, ethnicity, disability, and English-language proficiency; and the promise to offer parents a choice of a better public school when their child's school is designated as dangerous or has failed to meet its state's academic standards for two years in a row.

As Bush explained in a January 8, 2002, speech at the University of New Hampshire, "If a school can't change, if a school can't show the parents and community leaders that they can teach the basics, something else has to take place. In order for there to be accountability, there has [sic] to be consequences. And the consequence in this bill is that after a period of time, if a parent is tired of their child being trapped into [sic] a failed school, that parent will have different options, public school choice, charter, and private tutoring."

Similarly, Kennedy—who has since charged that NCLB has been inadequately funded and implemented—initially declared that the bill's "message to every parent" is "help is on the way." In one of many press releases celebrating the act, U.S. Rep. John Boehner (R-Ohio), chairman of the House Education Committee, promised that "these changes represent a significant departure from the status quo and will empower low-income parents with new options and new choices."

Three years later, Camden's families across the United States are still trapped in failing and dangerous schools. There are many adjectives that describe their relationship with the public school system, but *empowered* is not one of them.

Since the No Child Left Behind Act was passed, less than 2 percent of parents nationwide have transferred their children to other public schools. Teachers unions, school administrators, and journalists have argued that the low transfer rates prove parents do not want more choices and that they prefer their local schools. But while parents have more information than ever about the quality of their

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children's schools, in most cases they still have no way out of a failing institution.

Districts have not made a good-faith effort to implement public school choice. Sometimes parents are not notified of their option to change schools at all; other times they're told only after the school year is well under way. Some districts send parents letters discouraging them from transferring their kids. The choices themselves are limited to marginally better schools, with superior institutions often refusing to accept low-performing students.

One Bad School to Another

A February 2004 report by the Civil Rights Project at Harvard found that in 10 urban school districts with large concentrations of children eligible to exercise school choice under NCLB, less than 3 percent of eligible students requested a transfer. Even with the small number of requests, no district in the study was able to approve all or even most of the transfer requests.

Many parents of students in failing schools are not even aware of the right to transfer. A federally funded survey of Buffalo parents by the Brighter Choice Public School Project found that 75 percent of the parents surveyed did not realize their children attended a school designated as in need of improvement, which means it did not make adequate yearly progress in reading or math for two consecutive years. A full 92 percent said they would like to switch schools. A comparable percentage of parents in Albany also were unaware of the transfer option.

Similarly, a survey by the Boston-based Pioneer Institute found that only 29 percent of parents with children in underperforming schools knew the status of their children's schools, compared to 59 percent of parents whose children attended satisfactorily performing schools. Few Massachusetts parents knew they could transfer their children from underperforming schools to more successful schools. Out of about 100,000 Massachusetts students eligible to transfer out of underperforming schools, fewer than 300 have opted to do so.

In the end, though, the problem is not the parents but the law itself. Under NCLB, Title I federal funding—money used to provide extra educational services to disadvantaged students in high-poverty schools—does not follow children to better-performing, non-Title I schools. The result is that better-performing schools have no financial incentive to admit low-performing children.

In practice, children are offered transfers only to other Title I schools. Since most Title I schools are mediocre performers at best, parents have a choice of schools that are only marginally better. Furthermore, the school districts decide which schools parents will be allowed to "choose"; often they offer only one or two alternatives.

Many parents are offered "choice" schools that are just as low-performing as the failing school they are trying to break away from. In the words of school choice advocate Angel Cordero of the New Jersey–based Education Excellence for Everyone, "Camden children are transferred from one bad school to another bad school."

In Chicago students in only 50 of the 179 federally identified failing elementary schools would be allowed to move into higher-performing schools. Parents could choose from a list of 90 schools and could not pick a school more than three miles away from home. In 70 of the 90 schools open to transfers, most pupils failed state tests last year.

In San Bernardino, California, the designated school of choice for high school students was Arroyo Valley High School, which had lower test scores than the schools that were officially designated as failing. How could that happen? Federal standards did not designate Arroyo as underperforming only because until 2003–04 it was not considered "fully functional." (That was the first year it served all four grade levels.) District officials acknowledge that Arroyo isn't necessarily any better than the rest, but it is the only high school option available, since four out of the five

Ashley Fernandez has received numerous threats, including repeated confrontations with male students who grab her and then run away. When Ashley's mother began keeping her home from school, she got a court summons for allowing truancy.

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high schools are underperforming and considered in "program improvement," an NCLB euphemism for schools that have failed for more than three years in a row.

In October 2003 Connecticut's *Hartford Courant* described how for months Stacy May fought to transfer her son Taren out of Kinsella Elementary. Hartford school officials confirmed to the newspaper that May was welcome to transfer her son because Kinsella was now labeled a "school in need of improvement." But the district limited May's choices to three other schools, all of which had low scores on the state's standardized test and all of which are now also designated "in need of improvement."

In Palm Beach County, Florida, district officials are projecting that as many as 50,000 students at 64 of the poorest schools could choose another school this fall. But here again, many high-performing schools will be off-limits—and parents will have only two weeks to decide whether they want their children to move.

Even when parents make direct requests for transfers, districts frequently refuse to grant them. In New York City in 2002–03, more than 278,000 students were eligible for school choice transfers, 6,400 students requested transfers, and the district granted only 1,500 requests. That same year Richmond, Virginia, had just 120 requests for transfer out of 8,000 eligible children, and the district honored only 30.

Transfers are refused because the better schools are at capacity. The federal law ignores the grim reality that many urban districts have few high-performing schools with open slots. As the chief executive of Chicago Public Schools, Arne Duncan, told *Time* magazine in September 2003, "It's not like we have a lot of high-performing schools at 50% capacity."

The lack of slots might be less of a problem if Title I dollars could follow children to higher-performing schools. But a better solution is to break up the education dollars to increase capacity, allow more competition, and increase high-quality choices. In June 2004, for example, Chicago Mayor Richard Daley, who is in the unique position of legally controlling Chicago schools, introduced a plan to open 100 of the city's worst-performing schools to competition. By 2010 Daley intends to recreate more than 10 percent of the city's schools—one-third as charter schools, one-third as independently operated contract schools, and the remainder as small schools run by the district. Unfortunately, the governance structures of most school districts make it politically difficult to replicate Daley's plan: They would require approval by a school board or state legislation.

When parents are provided with real choice, demand increases dramatically. Since 1999, the privately funded Children's Scholarship Fund (CSF) has provided more than 62,000 low-income children across the nation with scholarships to attend private schools. The first year, more than 1.25 million children applied in 20,000 communities; since it was launched, the average income of participating families has been $22,000. The children's new schools may be parochial, denominational, independent, or a home school. They do not have to belong to any organization or meet any other requirement. The choice is left up to each family.

This year more than 24,000 kids are using CSF tuition assistance to attend a wide variety of private schools. In Los Angeles in 2003, only 229 children managed to transfer to a different public school under No Child Left Behind. Yet the Southern California Children's Scholarship Fund placed 1,600 children and has a waiting list of more than 5,000 names. Los Angeles charter schools such as Fenton Avenue Charter School, Camino Nuevo, and Accelerated Learning also have long waiting lists.

Around the country, the few bona fide school choice and tax credit programs continue to add children every year and often have long waiting lists as well. For example, Florida's Corporate Tax Credit Scholarship program, which provides scholarships to low-income children to attend public or private schools, serves 13,000 children, with another 20,000 waiting to get in.

Parents may not be getting much choice, but they are

School districts have not made a good-faith effort to implement public school choice. Sometimes parents are not notified of their option to change schools at all. Some districts send parents letters discouraging them from transferring their kids.

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getting a big tax bill. In a July study, the Cato Institute's Neal McCluskey notes that federal spending at the more than 36 departments and organizations that run major education programs ballooned from about $25 billion in 1965 (adjusted for inflation) to more than $108 billion in 2002. This year funding for the U.S. Department of Education is at an all-time high: $56 billion, an increase of $2.9 billion over last year and $13.8 billion since Bush took office.

The president's 2005 budget would raise education spending still further, to $57.3 billion. Under No Child Left Behind, Title I aid has risen to $12.4 billion. Title I spending has increased more during the first two years of the Bush administration than it did during all eight years of Bill Clinton's administration.

Unenforceable Choice

Despite state education leaders' cries that schools cannot afford the choices that NCLB was supposed to enshrine in law, districts are sitting on $5.8 billion in unspent federal funding from previous years, including nearly $2 billion in Title I aid. New York ranks first with $689 million in unspent funds; California is second with $671 million. Such money could provide many scholarships to better-performing private or public schools. Local districts claim that the unused funding is already obligated to existing programs and that federal funding rules are responsible for the delays.

Extra dollars do not necessarily equal better performance. More than 26,000 schools have been designated as failing under NCLB. The 2003 National Assessment of Educational Progress (NAEP) found that more than two-thirds of fourth- and eighth-graders were not proficient in math and reading. The NAEP also provides troubling news for students in Title I schools. In math, for example, 7 percent of black eighth-graders and 11 percent of Hispanics are proficient, while 61 percent and 53 percent, respectively, are "below basic."

Camden schools show that more money is not the answer. Camden is one of New Jersey's 30 *Abbott* districts—districts with low property-tax bases that receive supplemental funding from the state. As a result, Camden's per-pupil funding is higher than the New Jersey state average of $10,000 and the national average of $8,000; the Camden district has revenues of approximately $15,000 per pupil and receives large portions of federal Title I dollars. Camden schools had more than 1,200 incidents of serious violence in 2001–02, an increase of 300 percent from the previous year. The district has refused to release updated school violence numbers since then, but this year saw several highly publicized incidents, including a foiled Columbine-style plot to shoot students and an increase in the number of schools labeled persistently dangerous.

In the beginning, supporters of No Child Left Behind argued that its problems were just a matter of districts' adjusting to the new law. But as we begin the third school year in which kids are supposed to be able to escape failing schools, a lack of meaningful choice appears to be the norm.

The paucity of choice reflects another failure of the law: It has no real sanctions for schools that fail to comply. Parents can't even sue the government to compel federal officials to enforce the law. When parents in New York City and Albany sued their districts for denying children their rights to transfer and to receive tutoring services, a federal judge dismissed the suit, ruling that the law did not confer "choice" rights that could be enforced in court.

To judge from education activists' reports, going directly to the U.S. Department of Education doesn't seem to be an effective course of action either. New Jersey activist Angel Cordera repeatedly has tried in vain to get the Department of Education to enforce the law's school choice provision. In the meantime, he has worked tirelessly to find private scholarships for the most victimized children. Cordera recently found a place for Ashley Fernandez in a local Catholic school.

In the last two years, the Camden City Council (whose current members have never enrolled their own children in Camden's public schools) has twice passed resolutions calling for immediate school vouchers for the city's trapped children. Last fall the council voted 5-1 to ask the state of New Jersey to allow public funds to be used for scholarships. Such scholarships would enable children who are eligible to attend a school outside the Camden district, or even a private school. A 2003 survey by Rutgers University's Eagleton Institute found that 72 percent of residents in *Abbott* districts such as Camden support vouchers.

But for the time being, such options aren't available for students such as Ashley—and Abraham Santana and Samet Kieng. They don't have 15 years to wait for the No Child Left Behind Act to increase reading and math proficiency. They don't need Washington rhetoric about accountability, empowerment, or the imminent arrival of help. They need real choices now—while they're still in school and while they still have a chance to learn.

Lisa Snell (lsnell@reason.org) is director of the Education and Child Welfare Program at the Reason Foundation.

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Welcome to the Fun-Free University

The return of *in loco parentis* is killing student freedom.

David Weigel

In April 1968, student activists at Columbia University schemed to take over the dean's office as a protest against the Vietnam War and plans to build a new gym. More than 700 students were arrested, and the uprising won national attention. But the school's buttoned-up administrators hadn't wanted to involve the police, and the rioters eventually were allowed to graduate. The mayor of New York, John Lindsay, even arrived in December to address the students and applaud "the urgent, authentically revolutionary work of this generation."

How much of that revolution has carried over to the Columbia of 2004? Registered students who occupy a building would get a dialogue with administrators, but the school wouldn't shy from expulsion. According to Ricardo Morales, the school's crime prevention specialist since 1983, nonstudent radicals wouldn't make it into the campus buildings. "If you want to bring a friend over," Morales explains, "you bring him to the lobby and swipe your ID cards. The guest leaves a piece of ID. If he wants to stay for a few days, you can apply for a guest pass."

Even when they're not keeping their borders sealed so tight, college administrators have been adopting harsh measures in response to unapproved student behavior. Last fall, students at Southern Methodist University saw their "affirmative action bake sale," a bit of political theater in which prices were determined by the races of buyers, shut down by the student center. They had failed to register with the university as a "protest" or to go to the officially designated "protest zone," on the south stairs outside of the Hughes-Trigg Student Center.

Many college administrators throughout the country are taking great pains to keep their students under tight control. Yet in the late 1960s and '70s, whether colleges could rein in students was an open question. Previously, America's universities had operated under the doctrine of *in loco parentis* ("in the place of a parent"). By the start of the '70s, thanks to a series of legal rulings and cultural shifts, courts and colleges were tossing out that policy, and universities that had been dealing with students as wards struggled to find a new approach.

That didn't last. In loco parentis has been rejuvenated and returned. Administrators have tapped into the devaluation of personal responsibility illustrated by smoking bans and fast food lawsuits, coupling it with bullish political cor-

Groucho Marx irritates a professor during a protest in 1932 campus comedy, *Horse Feathers*. ©Bettman/CORBIS

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rectness. The resulting dearth of individual liberties on campuses would have seemed impossible to college students of 25 years ago.

Double Secret Probation

The rights of schools over their pupils were codified before the U.S. Constitution was written. In 1765 the legal scholar Sir William Blackstone wrote that, when sending kids to school, Dad "may also delegate part of his parental authority, during his life to the tutor or schoolmaster of the child; who is then *in loco parentis*, and has such a portion of the power of the parents committed to his charge."

Blackstone was writing about grammar school students, but 19th-century college administrators liked the idea too. Wheaton College, five years after its 1861 founding, denied students the right to form a secret society. The students sued, but judges washed their hands of the matter. In *Pratt v. Wheaton College* (1866), the Illinois courts said judges have "no more authority to interfere than [they] have to control the domestic discipline of a father in his family."

Courts took this hands-off approach well into the next century. When public or private universities bought land, the state treated them like personal fiefdoms. Students got whatever rights their school administrators saw fit to give. At Harvard in 1951, the Administrative Board could tell reporters that it would increase the punishment for a window smashing—by however much it wanted—"if a student's name is on the police blotter or in the Boston press." That was the power of in loco parentis.

Not until 1960 did this system begin to break down. That year, six students at the all-black Alabama State College participated in anti-segregation lunch counter sit-ins. The school's president sent them letters expelling them for "conduct prejudicial to the school." According to Stetson Law School professor Robert Bickel, the students' case cut to the root of in loco parentis: "The university actually asserted the right to arbitrarily give some students [due] process and deny it to others." When the students sued, federal courts sided with Alabama State. But in the 1961 decision *Dixon v. Alabama State Board of Education*, the U.S. Court of Appeals for the 5th Circuit rejected the school's claim of omnipotence. Suddenly, college enrollment was a contract between the student and the school. Since kids didn't lose their constitutional rights in their backyard, they couldn't lose them on campus. State universities slackened their grip, and private universities such as Columbia followed suit.

During the next few years, in loco parentis continued to collapse as courts chipped away at it. In 1974 the U.S. Supreme Court ruled 8-0 in *Scheuer v. Rhodes* that Kent State students had the right to sue the governor of Ohio for damages incurred during the notorious 1970 shooting there. Chief Justice Warren Burger concluded the brief decision this way: "We intimate no evaluation whatever as to the merits of the petitioners' claims or as to whether it will be possible to support them by proof. We hold only that, on the allegations of their respective complaints, they were entitled to have them judicially resolved." Students had been handed the keys to their kingdom.

By then, campus revolts were making national headlines, radical groups had been profiled in *Life* and *Esquire*, and undergrads were helping manage George McGovern's presidential campaign. By 1978, when Dean Wormer in *Animal House* threatened his students with "double secret probation," audiences recognized it as a knowing goof on a dead-and-buried policy. As Stetson's Bickel puts it, "The fall of in loco parentis in the 1960s correlated exactly with the rise of student economic power and the rise of student civil rights."

Save the Children

In 1969 Sheldon Steinbach arrived at the American Council on Education, the catchall coordinating body for universities, just in time to weather the worst of the campus revolts. Elite schools such as Berkeley, Columbia, and Cornell were acquiescing to radical students and opening up their internal judicial processes. Students won seats on some boards of trustees. Administrators appeared to have lost their grip.

"The basic liberal arts education began to crumble," Steinbach says. "That's what it looked like. When the war ended, we could consolidate, sit back, and look at how to save the system."

An unexpected boon arrived in 1974, the year of the Kent State decision *Scheuer v. Rhodes*. Sens. John Warner (R-Va.) and James Buckley (Conservative-N.Y.) sponsored the Family Educational Rights and Privacy Act (FERPA) in the hope of empowering parents to keep tabs on their kids'

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Just as colleges have calculated the legal risks of letting students get away with drinking or recreational drugs, they remain in danger of being held responsible when students attempt suicide.

academics. Committees amended the bill into a codification of student privacy rights, and Steinbach got a crack at it before FERPA moved on to the Senate. When the bill passed, parents could peek into the records of their children until their 18th birthday, at which point those rights transferred to the student. But FERPA created exceptions: Schools could release records to providers of financial aid and to "appropriate officials in cases of health and safety emergencies." If a student was hit with a subpoena or legal charge, the school could peek into his criminal records. Yet college administrators and their advisers, Steinbach included, kept the champagne corked. It wasn't immediately clear what effect the law would have, outside of giving parents annual notice of their new rights.

"It was a schizophrenic time," Steinbach explains. "We were moving from segregated campuses to co-ed, affirmative action campuses. We didn't have our feet on the floor in 1974."

Meanwhile, concern about the state of campuses was spreading. In March 1977, *Newsweek* ran a hand-wringing exposé titled "The End of Expulsion?," which gave the supposed academic apocalypse some context: "In just ten years, most of the rules that once governed student life *in loco parentis* have simply disappeared. Even serious scholastic offenses, such as cheating and plagiarism, seldom incur the harsh penalties that were once automatic. Most college administrators admit that they lean over backward to avoid expelling students." The irksome rites of passage that had been mandatory—core curricula, single-gender dorms, class attendance—fell away.

In the 1979 case *Bradshaw v. Rawlings*, the U.S. Court of Appeals for the 3rd Circuit spelled out the universities' weakness. When a Delaware Valley College sophomore three years under the Pennsylvania drinking age hitched a ride from a drunk driver and was injured in a car crash, he sued the school. The court shrugged him off. "The modern American college is not an insurer of the safety of its students," it said. "Rights formerly possessed by college administrations have been transferred to students." Expectations were pointless, because "beer drinking by college students is a common experience. That this is true is not to suggest that reality always comports with state law and college rules. It does not."

The court's decision reflected the way students lived: They had a new relationship with their deans, who should treat them like the young adults they were.

How then, did the contemporary nanny university arise? Administrators who got their degrees in the 1960s had a certain idea of how students should be governed, and they found three tools for regaining control. The first involved intoxicants, including the escalating war on drugs and the mid-'80s change in the drinking age from 18 to 21. The second was an attempt to stave off liability for student mental health problems by intervening with students who were seen at risk of breakdowns. The third and most well known was a rigid enforcement of political correctness that set standards for just how rowdy students could get.

Just Say No

University administrators immediately started wringing their hands over the "kids will be kids" philosophy of *Bradshaw v. Rawlings*. When one of their wards was arrested, injured, or killed, whether a lawsuit resulted or not, the school felt a blow to its prestige and sense of community. Unchecked hedonism and recklessness among students increasingly free to skip classes or make

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their own schedules were perceived as a threat to the institution's reputation.

Brett Bokolow, manager of the National Center for Higher Education Risk Management (NCHERM), estimates that colleges have been seeking formulas to keep students out of actionable situations for 20 years. In the 1980s, they were increasingly finding themselves liable for providing services or sponsoring events that involved alcohol. After only a few legal wounds, schools sought methods to put the responsibility for drinking or drug use on the backs of students and fraternities and sororities. Two weapons fell into their laps.

As the Department of Education opened for business in 1980, an increasing number of students were turning to government aid and loans to pay for their college bills. From 1970 to 1980, federal aid to college students soared from $600 million to $4.5 billion. In 1978 Congress had passed legislation that entitled all college students to federally insured loans. Suddenly, colleges had leverage to punish students for misusing their leisure time. If they were getting money from taxpayers, they were treated like any other employee found partying on the job. Since students were making use of their loans every minute of the academic year, all of their fun was suspect, and much of the adult behavior that vexed administrators was happening on the public dime.

Colleges became willing and able to shift some burden to Greek organizations, which had grown again after a marked falloff in the Vietnam era. Many schools created incentives for fraternities and sororities to go dry, or at least disincentives for them to stay wet. In one typical action in 1988, Rutgers University, which had just banned bringing kegs into dorms, responded to a student's death by embargoing all Greek events. In 1997, after first-year student Scott Kreuger drank himself to death at a pledge event, MIT banned freshmen from fraternities. More responsibility was shifted to fraternity and sorority members. By the mid-'90s,

Age of Propaganda

The government attacks teenage drinking with junk science.

David J. Hanson and Matt Walcoff

In July 2001 the U.S. Department of Justice announced an alleged breakthrough in research on alcohol policy. According to the DOJ, a comparison of drinking rates among American and European teenagers proved once and for all that Europe's more liberal laws and attitudes regarding drinking by adolescents lead to greater alcohol problems.

Backers of the current U.S. drinking age—21, the world's highest—have adopted the DOJ's finding as if it were handed down from Mount Sinai. They refer to it whenever someone mentions that the rest of the world seems to do OK without making such a big deal out of drinking by young adults. The "fact" of European insobriety has been cited last year in letters to *The Journal of the American Medical Association* and *The Washington Post*. The Department of Education sent the second letter to an e-mail list of journalists who cover higher education.

Yet even a quick analysis of the DOJ's report finds that it does not stand up to scrutiny. The study never went through peer review, the process in which other researchers judge a study's merits before it gets published. The DOJ used outdated survey numbers even though newer ones were available, and its European figures left out several important countries, including France and Germany.

What's more, even the numbers the department did use do not back up the claims of those who tout its research. American teenagers had a higher rate of intoxication than their counterparts in half of the European countries. When compared to teenagers in Southern Europe, which has very liberal views regarding alcohol, American teens were more likely to have been drunk in the last 30 days (21 percent vs. 13 percent). And while more than half of the American teenagers who drank reported getting drunk, less than a fourth of young Southern European drinkers said they had been intoxicated.

It is hardly unknown for interest groups to tout such junk science; everyone remembers the claim that Super Bowl Sunday is the worst day of the year for domestic violence, or that abortion causes cancer. But when a government agency engages in such tactics, it gives the claim a false respectability. People tend to assume the government is an impartial arbiter, sorting through rival positions and conflicting data in an effort to arrive at the truth.

Yet the federal bureaucracy has never served as a neutral moderator when it comes to alcohol policies. Rath-

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universities had become so strict that they were rarely found liable for student sins. Instead of threatening to punish their kids if they came home late, schools simply took away the car keys. If kids somehow got themselves into trouble, it was a police matter.

Colleges found the rest of their arsenal in 1987, when Congress threatened to withhold federal transportation money from states that allowed anyone below the age of 21 to buy alcohol, with the result that 21 became the de facto national drinking age (see "Age of Propaganda" below). Across the country, the harshness many schools had formerly applied only to drug offenses began to apply to drinking as well, and the war on fraternities was ramped up. Finally, in 1998 FERPA was amended to make one provision clearer: Colleges could sidestep their students' wishes and inform parents whenever a drug or alcohol law was broken. Before that, less than 20 percent of schools had informed parents of such violations. Afterward, most of them did so.

In 2001 *The Chronicle of Higher Education* reviewed this phone-home policy and found great success. Reporters spotlighted the story of a University of Delaware freshman who pledged to quit drinking after police stopped him on the street for a Breathalyzer test. After he was caught, his parents began bringing him home each weekend and lecturing him on his mistakes. The student stopped drinking, but not because he worried about the effects of booze. If he was caught again, he would be suspended for a year.

For Your Own Good

Keri Krissik transferred to Stonehill College in Easton, Massachusetts, in January 1999, 10 years after she was first diagnosed as anorexic. Krissik survived a heart attack four months after arriving and finished her course work while convalescing. In September the school refused to let her back in because, according to spokesman Martin McGovern, "we couldn't monitor her." If she were allowed back in and was injured, the

er than conduct reasoned, impartial scientific inquiry, agencies such as the DOI, the Department of Transportation, and the National Institute on Alcohol Abuse and Alcoholism throw all their weight squarely on one side of the debate. Indeed, they have created a drinking age industry. Research designed to promote the current drinking age gets federal funding, a stamp of approval, and widespread dissemination, regardless of its scientific merit.

The oft-heard line that the increase in the drinking age from 18 to 21 has saved hundreds of lives per year is another good example. The Transportation Department claims it can estimate to the single digit how many people the law has saved: 927 in 2001, or nearly half the number of alcohol-related vehicular fatalities among 16-to-20-year-olds that year. No serious social scientist would ever make such an outlandish claim. Not only is it impossible to know what would have happened had the law not changed, but real research on the drinking age has not been able to verify a cause-and-effect relationship between the law and alcohol use or abuse. Many studies show no relationship between the two variables (see, for example, "Behavioral Policies and Teen Traffic Safety," in the May 2001 *American Economic Journal*); others claim only that a few alcohol-related fatalities have shifted from the 18–21 age group to the 21–24 age group (see, for example, "College Student Drinking Behaviors Before and After Changes in State Policy," published in 1990 in the *Journal of Alcohol and Drug Education*). When it comes to the effects of the drinking age, the most you can say is that the jury is still out.

Yet the supposedly impartial federal bureaucracy still claims the drinking age has been as successful as the polio vaccine. An Internet search in the .gov domain finds more than 1,000 references to lives saved by the drinking age. It makes a great soundbite but poor public policy.

The bureaucracy's use of junk science is especially troubling because it calls into question the reliability of potentially life-saving information. If we cannot trust the government about the drinking age, some might argue, how can we trust it about the need to use seat belts, or the danger of HIV?

When it comes to alcohol policy, federal officials should stick to dispassionate, peer-reviewed research, not slick marketing aimed at promoting one point of view. They should act more like public servants and less like pressure groups. ■

David J. Hanson (hansondj@potsdam.edu) is professor emeritus of sociology at the State University of New York at Potsdam. Matt Walcoff (mwalcoff@yahoo.com) is an American journalist living in Prague.

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The expanding control over college students has had repercussions. The stiffening of campus law also illustrates the trend toward greater control of *adults'* personal behavior.

school could have been liable. Stonehill dearly wanted to avoid the risk.

Krissik eventually settled with Stonehill, but the courts neglected to ask why, after they'd relieved colleges of the need to nanny their students, the college wouldn't damn the consequences and let her study. The lawsuit provides an answer.

Just as colleges have calculated the legal risks of letting students get away with drinking or recreational drugs, they remain in danger of being held responsible when students face mental collapse or attempt suicide. If administrators had moved on and handed their wards more lifestyle freedom after in loco parentis ended, they'd have room to dodge these bullets. But since they had accepted responsibility for keeping kids off the bottle, it was easy for lawyers to make them responsible for the rest of the pressures of campus life.

Schools started this battle with a handicap. During the last decade, more and more students have been diagnosed as overstressed or treated for depression while still in high school. In February 2003, after tracking student complaints from 1989 to 2001, researchers at the University of Kansas found that the number of students diagnosed with depression had doubled while the number of "suicidal" students had tripled. The proportion of students taking psychiatric medication rose from 10 percent to 25 percent.

In response to such trends, college administrators started making pharmaceuticals and therapy sessions more readily available on campus. Elite universities have been able to provide the most buffers against mental illness claims. According to the May 2002 issue of *Psychology Today*, 2,000 Harvard students had sought counseling in one year. Fully half of them walked away with a prescription for antidepressants. Students who lived on campus had access to free massages and an ever-expanding mental health center.

The overarching goal of these programs is not to eliminate stress or wean students off medication. It's to stop lawsuits, and the ugliest lawsuits of the last decade have concerned students who killed themselves while enrolled, even though studies (including one conducted by the MIT task force appointed after Scott Kreuger's death from alcohol poisoning) have shown that most students who commit suicide never seek counseling.

At the University of Illinois, counselors work with residential assistants to monitor students who attempt or seriously consider suicide. Such students are ordered into four weeks of assessment sessions under the university's watch. Those who refuse get the Keri Krissik treatment—they're no longer students. *The New York Times Magazine* called Illinois' approach "a highly successful, model plan" for colleges that want to keep their undergrads under control.

How to Think

As the protective mind-set returned, it jibed with administrators' desires to make their campuses placid in every possible way. Alcohol and drug policies had emerged in a national context, justified by laws beyond the university's control, while mental health policies were driven largely by the threat of lawsuits. But administrators didn't need anyone to force their hands to insert speech standards and "hate crime" prohibitions into campus life. In 1987 the University of Michigan responded to a handful of anonymous racist fliers with new campus regulations aimed at suppressing offensive speech. The speech code, the first to end up in court, prohibited "any behavior, verbal or physical, that stigmatizes or victimizes an individual on the basis

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of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap, or Vietnam-era veteran status." A university pamphlet, soon withdrawn, explained that such "harassment" would include hanging a Confederate flag on your dorm room door or being part of a student group that "sponsors entertainment that includes a comedian who slurs Hispanics."

Ironically, a one-time member of Berkeley's Free Speech Movement seized on this approach when she became an administrator. Annette Kolodny, a dean of the University of Arizona's College of Humanities, used her 1998 book *Failing the Future* to explain why colleges needed to regulate what students said. In concert with other administrators, Kolodny had stiffened penalties for offensive speech and created workshops in which new students could have their values certified or corrected. Her bogeyman was "antifeminist intellectual harassment," and her polices were designed to bring contrary speech out into the open, so it could be "readily recognized and effectively contained."

By the start of the 1990s, Kolodny's view of campus speech was the norm. Harvard law professor Randall Kennedy told *The New York Times* in 1991 that speech codes made sense, and that their opponents were just warring against 1960s values. Journalists had gotten some taste of universities' strange speech standards through *The Dartmouth Review*, a conservative newspaper whose editors were punished for articles that would have been protected anywhere else in New Hampshire. But they didn't comprehend how strict the standards were until codes at Stanford, the University of Wisconsin, and George Mason University were challenged in court and overturned. Based on these cases, schools learned how to design speech restrictions that were more likely to pass legal muster.

The speech codes, increasingly unpopular but largely still in effect, contain more than a whiff of the omnipotence administrators enjoyed under in loco parentis. Students are not treated as the adults that *Dixon* made them out to be. Instead they're young minds that need shaping. In most cases the bodies formed to govern speech—student judicial boards, special committees—are uniquely able to adjudicate without explaining their standards for punishment.

Universities' speech restrictions, unlike their recreational policies, do more to attract lawsuits than to repel them. NCHERM offers a seminar on how administrators can thwart the Foundation for Individual Rights in Education and the American Civil Liberties Union. But there hasn't been any measurable trend toward saving face by scrapping these rules. They're seen as too important to ditch—and that's illustrative of the way universities view their students.

Back in Control

Four decades after in loco parentis started to stagger, college students would be hard pressed to name their new personal liberties. Yes, they no longer fear "double secret probation." And when administrators crack down, they will almost always at least provide a reason. But today's students may be punished just as hard as their predecessors—often harder. They've discovered that social engineers have a hard time turning down the opportunity to control things.

The expanding control over college students has had repercussions in the rest of America. Campuses are proving grounds for make-nice public programs. They've provided laboratories to test speech codes and small, designated "free speech zones" for protests. (Such zones marginalize and effectively silence dissent, which is one reason they've been adopted by the major political parties for their national conventions.) The stiffening of campus law also illustrates the trend toward greater control of *adults'* personal behavior.

In loco parentis could be overturned only once. After 1974, students should have had an arsenal of new rights. But parents never stopped believing that universities were responsible for shaping their kids, and schools have nervously assumed that too much freedom will bring about the system's collapse.

It won't. College students will drink, despair, play loose with hygiene, make dirty jokes. Before in loco parentis made its comeback, they were thriving. Meanwhile, the changes that really worried academics in the 1970s—demands for new disciplines, shrinking core curricula—are settling into permanence. It's the most enjoyable effect of the '60s student revolts that's being whittled away. ◻

David Weigel (dave@davidweigel.com) is an editorial intern at USA Today and a 2004 graduate of Northwestern University.

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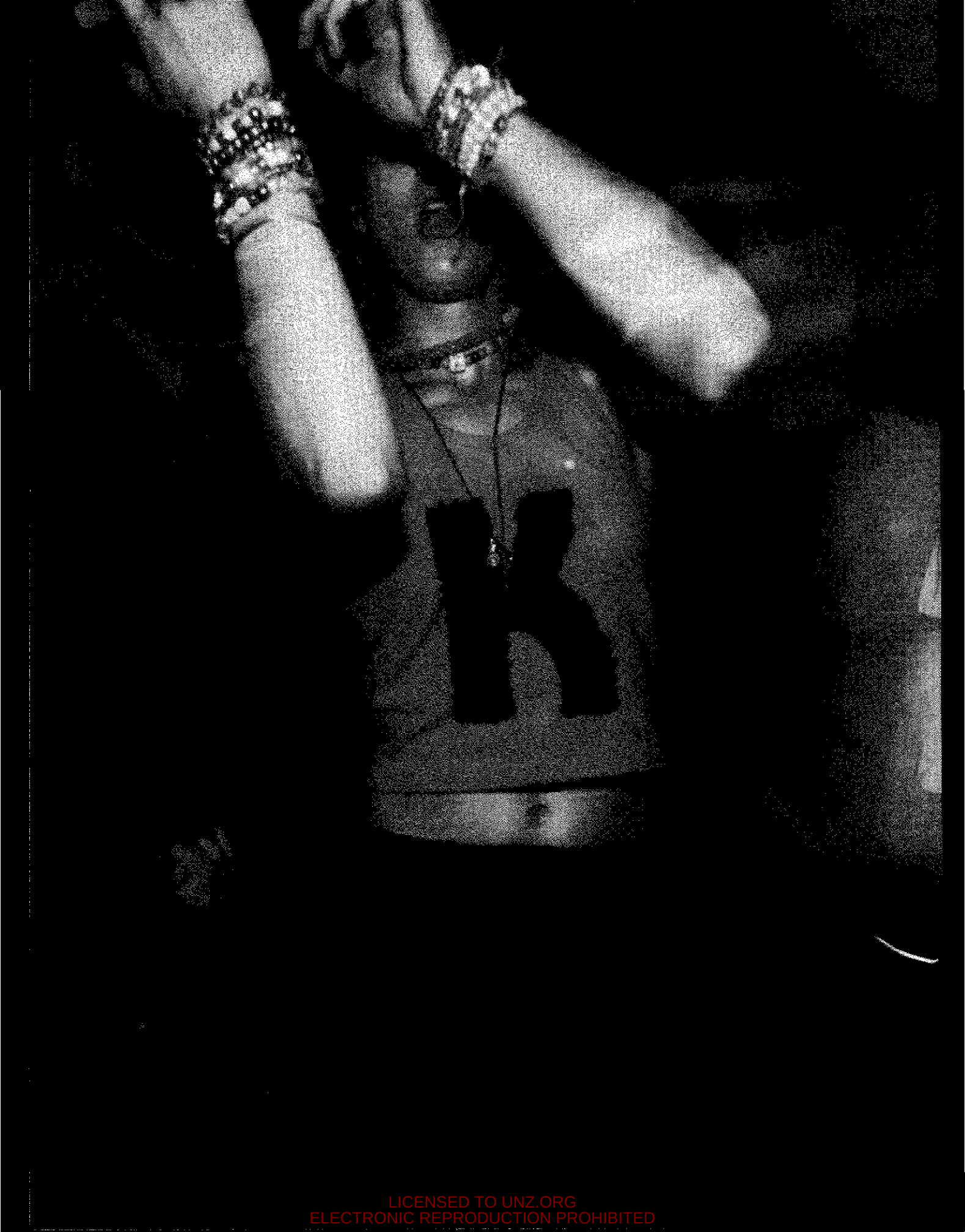

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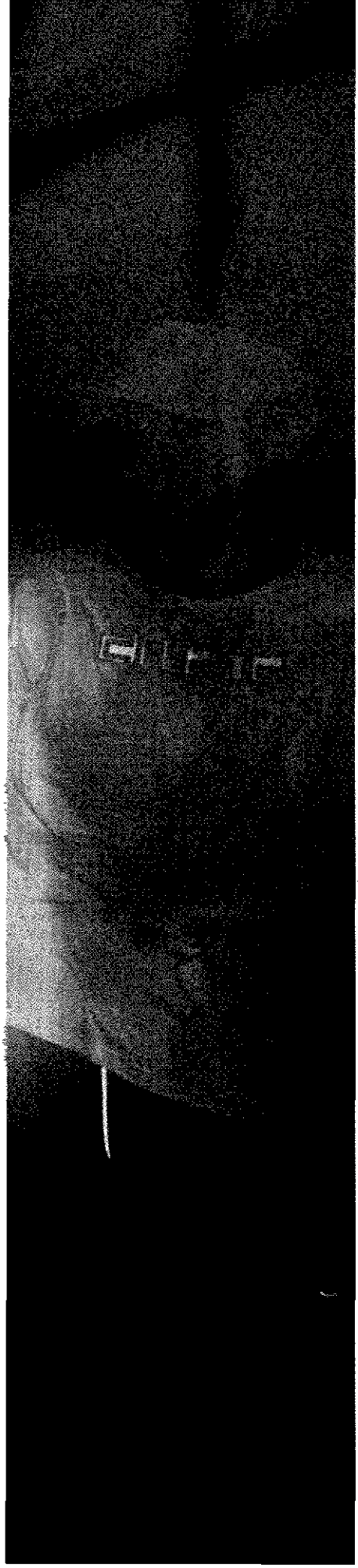

Dancer with Ketaset at a Baltimore rave, © Scott Houston / CORBIS

Open Secrets

How the government lost the drug war in cyberspace.

Michael Erard

FOR 36 YEARS the Drug Enforcement Administration (DEA) quietly published a quirky monthly newsletter called *Microgram* for a small audience of forensic chemists. It was "law enforcement restricted," which meant you could obtain it only if you were a law enforcement official, a government investigator, or a forensic scientist. As far as the public was concerned, it was a secret. In January 2003 DEA officials started to make *Microgram* publicly available via the Web (at www.usdoj.gov/dea/programs/forensicsci/microgram/bulletins_index.html), where it joined a vast sea of information about illicit drugs: how to get them, how to use them, why to avoid them, why laws controlling them should be either tightened or reformed.

Microgram's release was mostly unnoticed, and its reception has been subdued—so subdued that even the chemical underground, where people in years past might have found in the newsletter a wealth of knowledge about how to synthesize and distribute psychoactive substances, has hardly noticed it. Yet the seeming nonevent is worthy of attention because it reflects the government's recognition that their strategy to control drug use by controlling drug information has failed.

When it started back in 1967, *Microgram* was a few typewritten pages in which chemists shared lab techniques for analyzing and identifying the drugs that were showing up on the street. Although illicit drug use was rising, there was little working scientific knowledge about psychedelics among the chemists assisting law enforcement. Up to that point, the only drug chemists had worked for the Food and Drug Administration, which was in charge of protecting the quality of legal drugs, not identifying the composition of illegal ones. "Many of the techniques used today were formulated as needed by the people back then," says Tom Janofsky, a deputy administrator in the DEA's Office of Forensics. "Because the techniques weren't published per se, they were put into *Microgram*, and the methods were exchanged with the state and local and the other federal agencies in the field."

At first *Microgram* went to several dozen people. In the inaugural issue the editor wrote that if he didn't receive feedback, the newsletter might not continue. But *Microgram* was a hit with its intended audience. By 2003, 8,000 people within the DEA and 1,000 others were receiving it.

Microgram's existence was such

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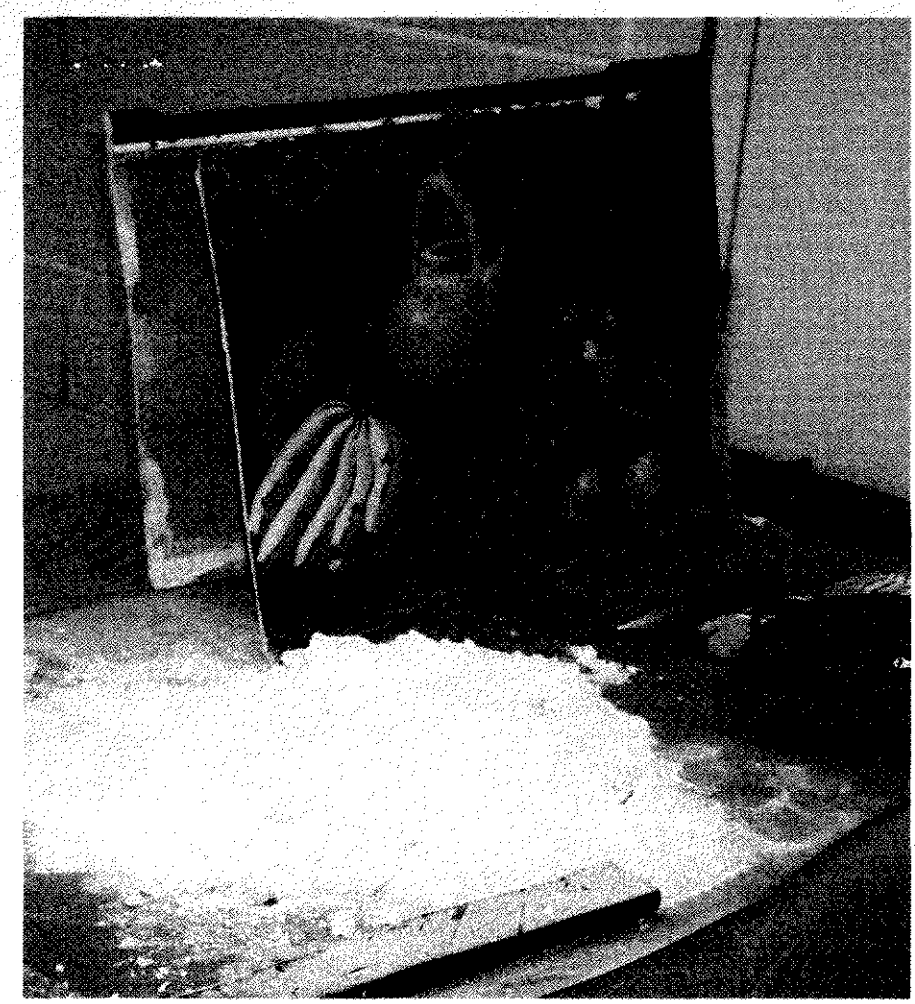
a well-kept secret that it never developed a following in the chemical underground. "I really doubt that people in and around the illegal side of drug dealings even knew of the existence of *Microgram*," says Alexander Shulgin, a former DEA-licensed chemist who is considered an underground icon for his do-it-yourself manufacture of designer psychedelics. "For me it was a source of infrared spectra of drugs, and methods of synthesis and access to physical properties." *Microgram* was so secret, Shulgin adds, that scientists were directed not to cite it in academic papers but to say the information came from "personal communication." (This is standard for citing all restricted publications.)

Over the years *Microgram* published job announcements, reviews of lab instruments, and articles reprinted from academic chemistry journals. But its core offering remained interesting little stories from the front lines of drug interdiction, written in detached prose and published anonymously.

Even today, the savvy smuggler or illegal drug chemist might find useful counterintelligence in *Microgram*. The December 2003 issue notes that drug-sniffing canines have failed to detect bales of marijuana sealed inside honey and wax, which suggests a workable method for getting weed across the U.S.-Mexican border (or a potential trap). If you're into selling psilocybin mushrooms, a careful reading of *Microgram* suggests, you should avoid coating them with chocolate, because virtually every law enforcement agency in the country is on the lookout for candy. Brainstorming methods for smuggling large amounts of heroin or cocaine? *Microgram* tells the fate of cocaine dissolved in canned liquids, embedded in the linings of plastic mugs, impregnated in a clear silicone caulk, and packed into decorative wooden globes, lotion bottles, candles, and pictures.

These tidbits were not widely available until recently because the DEA did not want to give ammunition to its enemies. "There was some synthetic information and some investigative techniques that we didn't want the bad guys to get ahold of," says the DEA's Tom Janofsky. Another reason to keep *Microgram* under wraps: Defense lawyers might have found its descriptions of drug analysis useful in their cross-examinations of government witnesses. Once the chemical underground went online, though, the lockdown on *Microgram* became irrelevant.

The Internet and the advent of the Web opened a new front in the war on drugs. During the last decade government agencies and anti-drug groups have staked out virtual turf, competing for eyeballs with drug law reformers, drug culture archivists, harm reduction activists, and commercial sites selling drug paraphernalia. The biggest prize in this online battle is the attention of the young. Government officials and social conservatives worry that information about drugs will sway impressionable youngsters into using them. Critics of the drug war see adolescents as naive users for whom a lack of accurate information is the greatest danger—and also as potential supporters of reform.



Cocaine hidden in frame of art print, courtesy DEA

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It has been difficult to tell who's winning in cyberspace. The widely used metrics of success for commercial Web sites—hits, page counts, unique visitors—don't necessarily have the same meaning in this highly contested terrain. As we'll see, visitors to freevibe.com, a Web site produced by the National Youth Anti-Drug Media Campaign and funded by the White House Office of National Drug Control Policy, are just as likely to be culture jammers as teenagers looking to "get the facts on drugs."

Then again, federal officials seeking to justify their $13 billion anti-drug budget request for 2005 have an interest in exaggerating the threat posed by the Internet. "Many websites, newsgroups, bulletin boards, and chat rooms promote the drug culture by providing a wide variety of information on drugs and drug paraphernalia," warned a 2001 report from the Department of Justice's National Drug Intelligence Center. "Many of these websites openly promote drug use, others glamorize the drug culture and thereby implicitly promote use and experimentation."

Some frustrated lawmakers have turned to suppressing online information about drugs by criminalizing it. In 1999 the Senate passed the Methamphetamine Anti-Proliferation Act, which would have made it illegal to distribute information, in print or online, about manufacturing or selling controlled substances that would be illegal. (The bill was killed by the House, then tucked into the Bankruptcy Reform Act with the Internet provisions removed.) For the most part, recent DEA activities have been aimed at curbing online sources for illegal drugs such as GHB, a tranquilizer, and other chemically similar substances, as well as using Web crawler and data mining technology to identify and prosecute illegal Internet pharmacies selling prescription drugs. Simple monitoring is another tactic; in 2002 a D.C.–based nonprofit, the Drug Reform Coalition, submitted a Freedom of Information Act request and found that the DEA had monitored the Web sites of 75 drug reform groups.

Proposals to punish people for drug-related speech reflect the desperation of government officials confronting a network of drug information that is more sophisticated, resilient, far-reaching, and self-correcting than ever before. Prior to the early 1990s, most unofficial information about drugs circulated via a loose network of underground publications, photocopies of notes and scientific articles, and word of mouth: Dealers talked to buyers, users talked to each other, and prison mates swapped tales. This is how users learned what substances and what combinations to try (or avoid). It's also how underground chemists learned their trade. But the network was limited. New pills or types of substances would hit the market before information about them did, and the network didn't always reach as far as the drugs. There were hardly any mechanisms for correcting bad information, and the drug culture was susceptible to propaganda.

"Time was when authority figures could safely tell 'white lies' to 'keep us safe,'" says John Robinson, a site administrator for Bluelight (www.bluelight.nu), a "harm reduction" site that features reports about MDMA (better known as Ecstasy) from all over the world. Robinson cites a story that started circulating around the time that the DEA first moved to ban MDMA in 1985: It was said that Ecstasy contained heroin, a rumor stemming from the accounts of early MDMA users who said the drug was like a combination of cocaine and heroin. That claim, says Robinson, was hijacked by governments for use as propaganda, and now "it is one of the central myths we have been trying to destroy on the Internet with Bluelight."

Earlier examples of urban legends about drugs include the claim that you can smell methamphetamine on a user, that smoking peanut skins or green tea will cause a high, and that so-called "red rock opium" contains opiates, which people try to smoke with marijuana. Today anyone with an Internet connection can readily find debunkings of these and other stories intended to scare people away from drugs. According to various sites, "red rock opium" is a form of "dragon's blood incense," which is made from daemonorops draco resin. Another myth concerns the "Chewbacca" technique for manufacturing methamphetamine (so named because a person called "Chewbacca-Darth" is credited for it), which involves such a delicate preparation of two sensitive precursors that it would be difficult to pull off even in a professional laboratory.

The current editor of *Microgram*, Bob Klein, acknowledges that the government allowed drug myths to circulate. "A lot of information [passed among drug users] was flat-out bogus," he says. "A huge amount of material circulating around the chemical underground," such as smoking dried banana peels or making amphetamine from chicken feed, "was just bullshit. And the government wasn't going to correct those

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misconceptions for obvious reasons."

Now a host of Web sites can nip misinformation before it circulates, creating what is in effect a real-time, worldwide peer review process.

For instance, on April 20 mystryman, the moderator of a message board at Bluelight, posted the warning that a drug called 5meo-dipt, known as "Foxy," was being sold as Ecstasy in Florida. The posting referred to a discussion thread at another site, beaniebaby.com, as well as a link to pages about 5meo-dipt at one of the most comprehensive sites for drug info, The Vaults of Erowid (www.erowid.org). Another topic on Bluelight was the availability of LSD around the United States, in Cincinnati, Toledo, Milwaukee, and Indianapolis. "It's totally possible that there IS acid in florida, but It's also possible that you won't find any," wrote toxiku. (All eccentricities of style and spelling from Internet posts are preserved throughout this article.)

As in pre-Internet days, drug users continue to share their experiences with each other, but when these discussions take place online they're available immediately to a wide audience that can respond quickly. On February 26, 2004, at pillreports.com, nine people from around the U.S. and Canada had posted reports on seven varieties of Ecstasy pills, describing them (sometimes with photos), rating them, and discussing their effects.

A poster known as OICU812 had this to say concerning a small, round, pink pill stamped with an envelope logo: "very strong pill i cant really give an accurate report to how strong one is cause i did 5 over the night. but man it was so intence and such a rush for at least 12 hours then the next few days were wacked out 4 sho. all in all they were bad to the bone to say the least." Another poster, Ongie975, complained about a pill stamped with a blue dolphin: "Definitely got ripped off and not too happy about it." Responded Smiley Xer: "Probably more speed than anything else. Bunk dolphins are going around. Be careful! ~peace." Doctorj added, "Dolphins do have an interesting rep. I stay away from them. Peace."

Bluelight's John Robinson says this sort of exchange illustrates the evolution within the drug culture of knowledge that ultimately helps to keep people safe. "We have always tried to walk the line between the oral culture and the world of academic science," he says. "The Internet allows us to have an open, anonymous environment where people are able to speak freely and share their experiences, but it also means that we can make the effort to support what is said with references."

Government officials are confronting a network of drug information that is more sophisticated, far-reaching, and self-correcting than ever before.

Other similarly interactive sites serve as the memory of the drug culture. The largest, most extensive of these is Erowid, which covers a huge range of substances, from marijuana to absinthe to morning glory seeds to obscure research drugs such as 5-Meo-AMT. Founded in 1995, Erowid boasts more than 28,000 visitors a day and some 20,000 documents related to psychoactive substances, including plants, illicit synthetics, pharmaceuticals, and "smart drugs." The information includes basic facts, legal status, chemical makeup, trip reports, spiritual associations, and references to scientific articles (including some from *Microgram*).

Microgram's Bob Klein complains that "many things that would have been better left buried in obscurity—like smoking bufo toad skins, sniffing concentrated cow pie fumes, allowing yourself to be stung by scorpions, smoking jimson weed or salvia divinorum, drinking cough syrups, mixing up concoctions of any of dozens of different kinds of drugs and pharmaceuticals, drinking ayahuasca tea, etc., etc., etc.—have been brought to light by the Internet, and are therefore practiced." But contrary to what the anti-drug crowd warns, many of the posts on these sites hardly glamorize drug use. One writer to Erowid, for instance, describes a 5-Meo-AMT trip as "the worst decision I have ever made." After hours of paranoia, nausea, headache, and pounding heartbeat, he ended up examining his life and deciding "that the current lifestyle of subtance abuse must end. I have truly been scared sober.... I am writing this urging people to stay away from this chemical. It is very similar to LSD at the beginning but toward the end all hell broke loose."

Some of the messages at Bluelight read like a *Consumer Reports* of illicit substances. Wrote Mihgzer on March 3, 2004: "There are some puple gel tabs in america, they taste funny, some people liked them, some people got sick and said they thought it was 5meoamt." But most postings do contain genuine warnings. Mystryman warned people about the appearance of purple pills containing Para-methoxy-amphetamine, or PMA, in Maryland and Pennsylvania. "Not

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much to say but, these chemicals can make you die low doses. PERIOD!!!!" Rejoined .dR spgeddi, "australian bluelighters are all too familiar with the dangers associated with this drug. one entry in the shrine is dedicated to a beautiful person who passed foolishly experiamenting with pma."

Many of the drug sites appear to be offered in the spirit of harm reduction. Says the welcoming message at shroomery.org: "This site was created to help stop the spread of dangerous misinformation related to magic mushrooms, so that people can make intelligent and informed decisions about what they put in their bodies." The Ecstasy reduction site dancesafe.org includes this disclaimer at the bottom of its homepage: "This website provides health and safety information only. We neither condemn nor condone the use of any drug. Rather, we recognize that recreational drug use is a permanent part of our society, and that there will always be people who use drugs, despite prohibition. The drug information we provide, therefore, is meant to assist users in making informed decisions about their use."

By comparison to the old chemical underground, the connections offered by the online version are vast. Shroomery.org alone provides 25 links to sites in Scotland, England, France, Brazil, Russia, and elsewhere on the use of psychedelic mushrooms. It also contains links to 38 marijuana sites, six Ecstasy sites, and 14 sites dealing with miscellaneous drugs such as the cough suppressant dextromethorphan.

The 2001 report from the National Drug Intelligence Center counted 52 Web sites providing information on the production, sale, or use of Ecstasy, GHB, or LSD. An update (which the NDIC promises but has not yet done) would undoubtedly turn up more. The pro-marijuana site yahooka.com boasts 5,947 links to sites that, among other things, promote drug policy reform, discuss cannabis culture, offer marijuana-related goods and services, and provide growing information. There are links to 1,203 sites in languages other than English, including one in Arabic and one in Latvian.

This plethora of information has altered the drug war in numerous ways, some of them predictable. Web sites that sold pipes and bongs were easy targets for Operation Pipe Dreams, the Department of Justice's 2003 crackdown on drug paraphernalia merchants, which netted 55 suspects and led to at least 56 indictments (including one that sent actor Tommy Chong to jail for nine months). For those trying to avoid that sort of trouble, the Internet has been a source of advice on how to escape attention and deal with authorities. The experts at Erowid, for instance, answer questions about what substances show up on drug tests, including techniques for beating the tests, as do the message boards at urineluck.com, owned by Spectrum Labs, a Cincinnati-based company that makes detoxification products to beat drug tests.

The drug war in cyberspace also has led to goofy attempts at hipness, such as the government's aforementioned Freevibe (freevibe.com). The site, which promises the "lowdown" on marijuana and other drugs, is mainly an advertisement for other anti-drug efforts, with a few interactive features, such as a message board that features dramatic scare stories about older sisters dying from marijuana overdoses and the like. A news section hasn't been updated since 2003, and the drug facts link promises the "latest" research—from 1999. In the Ecstasy section, no mention is made of Dr. George Ricaurte, the author of a *Science* article in 2002 that was retracted because the substance given to research animals was methamphetamine, not Ecstasy. However, a visitor can send an e-mail "Stoner greeting card" ("for when bad things

Crossballs Puzzle

Why don't the guests on Comedy Central's fake debate show get the joke?

Jacob Sullum

"Pac-Man's homophobic," says a video game critic wearing glasses, a sweater vest, and a tie. "The ghosts are homosexuals: They wear garish, bright colors and dresses, and they rub up against each other in a box. Think about it. Is the Pac-Man going to...let them be homosexuals, let them get married? No, he's going to eat a power pellet and then go chomp the ghosts....If we had power pellets in real life, there would be no gay culture right now."

On the other side of the desk, a defender of video games is momentarily stunned. "It's laughable," he says. "No reasonable person would make that connection."

True enough: His opponent is not a reasonable person. He's a character played by the comedian Jerry Minor on the Comedy Central series *Crossballs*. The show's premise is straightforward: "comedians posing as experts...debating real people who don't know the show is fake."

Crossballs is at least as edifying as the typical TV debate show—and a lot more enter- »

Crossballs, courtesy Comedy Central

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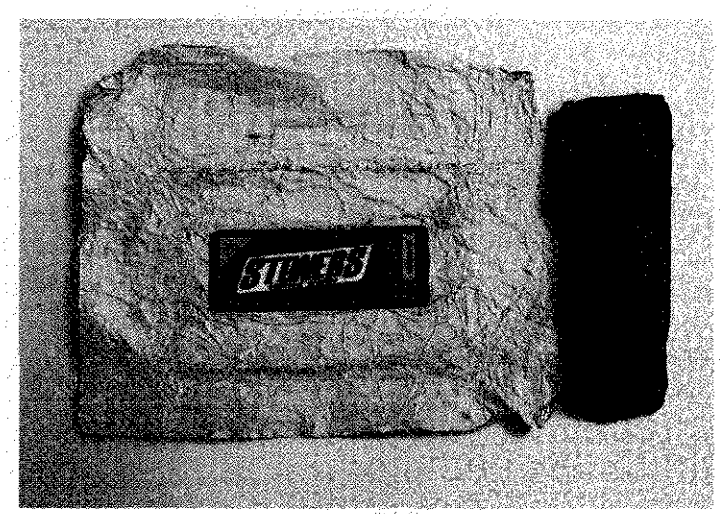

happen 'cause someone was stoned"), which is the only humorous moment in the entire site.

By comparison to sites like yahooka.com, urineluck.com, or bluelight.nu, Freevibe is a cultural wasteland. On February 26 two people had posted their "anti-drug": someone named Dude, who said "my anti drug is the marines," and Jaden of LBC, who wrote: "My anti-drug? My future lets face it folks turning to drugs isnt exactly getting rid of your issue or issues that made you turn to them drugs a whole new set of issues sometimes the key to helping oneself is through helping others if your life sucks that bad join the military or do community service helping others is quite possibly the greatest feeling you can get when you feel appreciated."

People posting to various pro-drug sites, blogs, and Indymedia sites criticize Freevibe and discuss ways to jam it. At smokedot.com, a user named Fiend claims to have sent an essay on writing as his anti-drug, featuring names of authors who were all drug users; Fiend said Freevibe posted the essay. At a Portland Indymedia message board, someone quoted an anti-drug message they'd found on Freevibe: "EyeHeartJesus—Once I was asked to smoke a joint rolled in Bible paper. I was totally like 'No way buddy, smoking weed is for devil worshipers and Nelly.' I showed that guy." Wrote the Indymedia poster, with the handle of "no one in particular," "Come on, we can do more! It'll be fun! Try to get the most outlandishly rediculous thing past the moderators that you can."

On the other Freevibe message boards, no one had posted for days. Posters cannot talk to each other, and replies to questions come from automailers. The Freevibe officials don't seem to understand that without interaction—or with surveilled and censored interaction—there can be no culture around drug non-use. On the pro-drug sites, by contrast, discussion is constant and users interact all the time.

Young, impressionable minds aren't the only audience for sites like Erowid, Bluelight, and Yahooka. They're also where law enforcement investigators check on what the "bad guys" know—without having to get out of their seats. The Internet "is a good resource to check whether a specific substance is being abused, or for methods of abuse," says Bob Klein. "That's valuable for the really obscure stuff, or weird combinations, or for tracking developing or declining trends."

Such "drug abuse sites" also have proven useful to the medical community. Paul Wax, a toxicologist in Phoenix, says he visits Erowid once a month or so to look up substances that aren't in the medical literature. In one recent case, Wax recalls, "someone came in to the hospital and was acting delirious, saying they'd taken something called tryptanite. I said, 'Tryptanite? I've never heard of it.'" So Wax put the word into Google and pulled up www.ecstacy-stuff.com/trip2night.html, which described an ephedra and dextromethorphan product. This knowledge saved the patient a trip to the psychiatric ward. "The nurses thought he was crazy," Wax says. "They thought he was a psych patient. Some who didn't know what he was taking might conclude he had some psych problems and needed to go to some facility. But the drugs wore off, and he cleared up."

In 2002 Wax published a paper about recreational drug sites in the academic journal *Pediatrics*. He described the case of an 18-year-old boy who took several tablets of a

Candy bars containing THC, courtesy DEA

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hallucinogen called 2C-T-7, more widely known as "blue mystic." Wax found that the standard medical literature didn't contain any information about 2C-T-7 on Medline. When he searched the Web, however, he found extensive descriptions on two Web sites, Erowid and Lycaeum (lycaeum.org).

In his *Pediatrics* paper, Wax warned that "adolescents, who are often adept at navigating these Internet resources, may be particularly susceptible to these communications." In an interview he is more sanguine about the Internet. "I don't think these sites are going away," he says, "and I'm not an advocate that they do."

This was the informational context in which *Microgram* went public. Ultimately, DEA officials say, they recognized that the spread of information via the Internet had made the law enforcement restriction on *Microgram* obsolete, so they decided to end it. "A lot of the information that was previously sensitive is now very common knowledge that's available to anybody," says Bob Klein. "It's basically made moot many of the previous reasons for keeping [*Microgram*] law enforcement restricted." In late 2002, the publication split: *Microgram* became *Microgram Bulletin*, the monthly newsletter with the colorful stories, and *Microgram Journal*, a scientific, peer-reviewed journal aimed at drug chemists (online at www.usdoj.gov/dea/programs/forensicsci/microgram/journals_index.html).

Microgram remains so obscure that few drug-oriented sites have linked to it since it went online. It receives only 7,500 or so hits a week, mostly from law enforcement. Klein says he expected a deluge of requests for back issues, but it hasn't occurred; he suspects that some of the fringe pro-drug groups haven't figured out that *Microgram* is now available on the Web. (His theory why: "Because they're doing too much dope.")

"I think the impact of liberating *Microgram* will be zero," says Richard Glen Boire, general counsel at the Center for Cognitive Liberty and Ethics, a Davis, California-based nonprofit that has mirrored *Microgram* on its Web site. (He heard that the DEA and FBI were collecting the IP addresses of browsers who came to the site, and he didn't think people accessing public information should be surveilled.) Last year Boire unsuccessfully sought the release of back issues of *Microgram* under the Freedom of Information Act—for older issues the restriction still holds—but despite that, he says, the now-public newsletter is mainly "a useful P.R. publication for the DEA, for getting increased funding and media attention."

Yet some observers of the U.S. government's information policy are buoyed by the DEA's decision, because open publication of *Microgram* engages a larger pool of scientists and others in forensic science, and it opens up channels of communication—for example, between the medical community and law enforcement. "I think DEA made the straightforward calculation that in this case the benefits of openness far outweigh the risks," says Steven Aftergood, editor of *Secrecy News*, a publication that tracks U.S. secrecy laws for the Federation of American Scientists. "The release of *Microgram* is a rare flash of rationality in government information policy."

John Robinson of Bluelight also praises the release. "We've long applauded *Microgram*'s decision for full disclosure," he says, "and do think it is a positive sign." If nothing else, the DEA's new openness suggests that drug warriors are starting to see the futility of promoting abstinence through ignorance. ▯

Michael Erard is a writer in Austin, Texas.

taining. But it poses a serious puzzle: Why don't the real guests realize the fake guests are fake?

One possibility is that the positions staked out by the comics pretending to be experts are what we've come to expect from TV pundits: strong beliefs backed up by little more than bold assertions and bluster. When a marijuana activist played by Matt Besser (the show's co-creator and executive producer) begins a segment about drugs by declaring, "I think we all agree that pot is good for everyone," his debating style does not seem very different from what you can see on *The O'Reilly Factor* any given evening.

Likewise, the easy resort to ad hominem attacks is familiar to viewers (and guests) of real debate shows, so it does not seem so strange when a *Crossballs* guest calls an opponent "crazy," "stupid," a "schmuck," a "right-wing fascist type," or "no better than Dr. Mengele." In fact, all those insults come from real guests who think the show is on the level.

Still, as the impostors' comments become more and more outrageous, you'd think the dupes would realize something is amiss. When Besser's pro-pot character talks about doing "research" on local kids, getting them alternately high and drunk before sending them out to drive around the neighborhood, can anyone seriously believe him?

Yes, it turns out. Marilyn »

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David Simon Says

The creator of HBO's *The Wire* talks about the decline of journalism, the failure of the drug war, and a new kind of TV.

Interviewed by Jesse Walker

ON SEPTEMBER 19 an often-overlooked gem will return to HBO. *The Wire*, entering its third season, is sometimes described as a Baltimore-based crime show, but that's a little misleading. It's a show about cops and criminals, but it doesn't follow any genre formulas. It does not wrap up a case every hour, has no clear-cut heroes and few clear-cut villains, and is willing to explore the ways that life in the middle of a police hierarchy and life in the middle of a criminal syndicate might produce the same frustrations.

At the center of *The Wire* is creator-producer-writer David Simon, 44, a veteran of the Baltimore *Sun* who rose to national prominence with his 1991 book *Homicide: A Year on the Killing Streets*. The product of 12 months immersed in the Baltimore homicide unit, it was quickly acclaimed as a classic of contemporary journalism and soon inspired a TV series, NBC's *Homicide: Life on the Street* (1993–1999). Simon's next book, *The Corner* (1997), was written with retired detective Edward Burns; it was the product of another year-long immersion, this time in a West Baltimore neighborhood ravaged by the drug trade and the drug war. It too made a mark on the small screen, as an HBO miniseries in 2000.

Simon had a hand in each program—he co-wrote *The Corner* and wrote several episodes of *Homicide*—but he didn't exercise creative control over a television series until he and Burns launched *The Wire* in 2002. Though with *The Wire*, even the phrase *television series* is somewhat misleading. Each season is more like a 13-hour film, or a 13-chapter novel, that grows steadily more engrossing as it unfolds. The show's stable of writers now includes several prominent crime novelists: George Pelecanos (*Soul Circus*) joined the staff in the second season, while season three will include scripts by Richard Price (*Clockers*) and Dennis Lehane (*Mystic River*).

Last year the program explored corruption on the waterfront, with the tale of a union official who dealt with criminals not to feather his own nest but to reverse the declining fortunes of the port, with terrible results; the story was closer in spirit to a classical tragedy than a police procedural. The program's other major story line centers around the West Baltimore drug trade, with battles between gangs for territory and within them for status and power. It sometimes feels like one of Shakespeare's history plays, if there is a history play that looks without flinching at the bankruptcy of the drug war, the intersection between crime and politics, and the day-to-day deprivations of inner-city poverty.

> "I've become cynical about the ability of daily journalism to effect any kind of meaningful change."

Managing Editor Jesse Walker spoke with Simon in July 2004, as production for the third season drew to a close.

reason: Would you describe *The Wire* as a cynical show?

David Simon: It's cynical about institutions, and about their capacity for serving the needs of the individual. But in its treatment of the actual characters, be they longshoremen or mid-level drug dealers or police detectives, I don't think it's cynical at all. I think there's a great deal of humanist affection.

reason: *The Wire* draws heavily on Ed Burns' experiences as a policeman. But though you cast yourself as a reporter in one episode, there hasn't been an inside-the-job look at a journalist's life. Is that something you're thinking about doing in the future?

Simon: We might glance at it a little bit. One of the sad things about contemporary journalism is that it actually matters very little. The world now is almost inured to the power of journalism. The best journalism would manage to outrage people. And people are less and less inclined to outrage.

I think if you look at what journalism has achieved in terms of parsing the events that got us into this war in Iraq, or the truth about what happened in the election—I've become increasingly cynical about the ability of daily journalism to effect any kind of meaningful change. I was pretty dubious about it when I was a journalist, but now I think it's *remarkably* ineffectual.

reason: Do you think you can raise that kind of outrage with a TV show?

Simon: I don't. *The Wire* will have an effect on the way a certain number of thoughtful people look at the drug war. It will not have the slightest effect on the way the nation as a whole does business. Nor is that my intent in doing the

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show. My intent is to tell a good story that matters to myself and the other writers—to tell the best story we can about what it feels like to live in the American city.

reason: What's the show's underlying message about the drug war?

Simon: That it's a fraud. It's all over except for the tragedy and the shouting and the wasted lives. That'll continue. But the outcome has never been in doubt.

reason: I've seen one writer citing *The Corner* to make the case that the drug war needs to be fought harder.

Simon: What idiot was that?

reason: His name was Eli Lehrer. [Lehrer said the book "vividly describes just how bad life became in a typical inner-city neighborhood" after Baltimore's then-Mayor Kurt Schmoke came out for a less punitive approach to the drug war. In fact, Schmoke's police department locked up more people for drug crimes than any previous administration.] He was writing in the American Enterprise Institute's magazine.

Simon: Ed Burns and I spoke at one of those groups. There came this point where a guy said, "Well, what *is* the solution? Give me the paragraph; give me the lede. What's the solution, if not drug prohibition?"

I very painstakingly said: "Look. For 35 years, you've systematically deindustrialized these cities. You've rendered them inhospitable to the working class, economically. You have marginalized a certain percentage of your population, most of them minority, and placed them in a situation where the only viable economic engine in their hypersegregated neighborhoods is the drug trade. Then you've alienated them further by fighting this draconian war in their neighborhoods, and not being able to distinguish between friend or foe and between that which is truly dangerous or that which is just illegal. And you want to sit across the table from me and say 'What's the solution?' and get it in a paragraph? The solution is to undo the last 35 years, brick by brick. How long is that going to take? I don't know, but until you start it's only going to get worse."

And the guy looked at me and went, "But what's the solution?" He said it *again*. Ed Burns restrained me.

reason: You've suggested that the third season is going to look at political reform.

Simon: Reform of all kinds. Political reform, reform within the department, reform within the drug trade. Reform is the theme.

You'll see a political component. But the theme of reform is not just political. There will be several characters who will present themselves as potential reformers. Some of them actually will be reformist, and some of

David Simon, courtesy HBO

>> Crossballs Puzzle

MacDougall, executive director of the Orange County, California, group Drug Use Is Life Abuse, is outraged. "You're a jeopardy to society," she tells Besser (to which he retorts, "You're a *Wheel of Fortune* to society").

With her '50s-style hairdo and high-necked, long-sleeved dress, the stiff, humorless MacDougall is a perfect foil for Besser's character—who, it becomes clear, got high before going on the air. MacDougall, in fact, is suspiciously good at playing her part, but she is indeed a real person. The explanation for her credulity, I think, is that she assumes anyone who opposes the war on drugs is an irresponsible druggie, just the sort of person who would get high before going on national television or encourage teenagers to drive while intoxicated.

Similarly, Wiley Drake, a Southern Baptist pastor invited on *Crossballs* to condemn homosexuality, takes it in stride when Besser, playing a gay rights activist, discusses his "polyamorous relationship" with six other men, including his brother, and insists, "You can't be pro-family only so far, Wiley. There is nothing more pro-family than incest." Drake even buys Jerry Minor as a spokesman for the "Animists' Rights League" who asks, "If we as a society are making it so hard for two human beings of the same sex to get married, then what does that say to a woman who wants to get married to a table, or a man »

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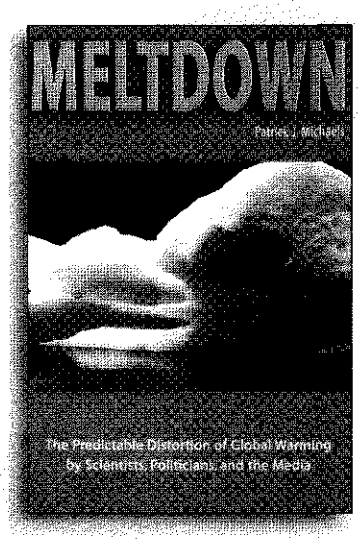
"This book is written for everyone who has a curious mind and a feeling that media-fed claims of the end of the world just don't add up."

—John R. Christy, Director, Earth System Science Center, University of Alabama at Huntsville



Do scientists, politicians, and the media exaggerate their claims about the environment? And if so, why? Climatologist Patrick J. Michaels argues that such exaggeration is inevitable in environmental science, especially with regard to global warming.

In this readable and often humorous critique, Michaels documents hundreds of exaggerations, misstatements, and errors that have appeared in major peer-reviewed scientific journals and been trumpeted by top newspapers and television networks. *Meltdown* explains why the gap between perception and reality persists.

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them will not. Part of the season, from the viewer's perspective, is figuring out who's who.

reason: What kind of reaction does the show get from the police?

Simon: I thought we'd get a bad reaction, because it clearly is very down on the drug war. In the middle of the first season, after it was clear what the tone of the show was, I went to the FOP [Fraternal Order of Police] lodge off of 41st Street [in Baltimore]. I basically was going to say, "OK, I'm ready to take everybody's shit. What do you have to say?" And they just kept reciting scenes back to me that had made them laugh, that felt real to them.

Ed was a cop for 20 years. I covered that world for 13. We didn't get the shit wrong. A lot of the guys knew the stuff we were referring to, the cases that we were stealing from.

reason: Have you gotten any reaction from the local criminal community?

Simon: They like it. Around the courthouse, there's a hilarious wiretap of people on a Monday talking about the Sunday night episode. I was dying to get ahold of it, but it never became public—most wiretap stuff doesn't, unless it's brought into evidence.

reason: How does your experience doing *The Wire* compare to your experience doing *Homicide*?

Simon: HBO's a lot smarter than NBC. They can afford to be. They don't care if you're watching every show on HBO. If you're a subscriber and you're only getting it for two shows out of 10, they've still got your $17.95. And therein lies all the difference.

That's a model that can't exist in network TV because of the need to present the maximum number of viewers to advertisers. That leads to decisions about story, character, and theme on network TV that are just destructive. They were destructive on *Homicide*. Compromises had to be made.

What writer wants to make compromises with *story*? Story is the only reason you're in it. ■

The Wire, courtesy HBO

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Bad Deal

How FDR made life worse for African Americans

Damon W. Root

Reconsidering Roosevelt on Race: How the Presidency Paved the Road to Brown, by Kevin J. McMahon, Chicago: University of Chicago Press, 298 pages, $20

FDR's Folly: How Roosevelt and His New Deal Prolonged the Great Depression, by Jim Powell, New York: Crown Forum, 352 pages, $27.50

FRANKLIN DELANO Roosevelt ranks near or at the very top of almost every standard list of America's greatest presidents. But there is a substantial part of the American public for whom the legendary four-termer did little: African Americans. Despite the determined efforts of his do-gooder wife Eleanor, for example, he failed to support federal anti-lynching legislation and refused to integrate the armed forces. (Successor Harry Truman finally did the latter in 1948.) Although supposedly sympathetic to the plight of black America, FDR was not about to risk losing either his New Deal or World War II by alienating Southern supporters or moving too far ahead of public opinion.

Two recent books, one generally liberal and the other libertarian, offer interesting and divergent viewpoints on what Roosevelt and his New Deal did, and did not do, to improve life for American blacks. In *Reconsidering Roosevelt on Race: How the Presidency Paved the Road to* Brown, Kevin J. McMahon credits the New Deal with establishing a judiciary "eager to defer" to the executive branch's authority and expertise, allowing the Justice Department to "instruct" the courts on civil rights cases. In *FDR's Folly: How Roosevelt and His New Deal Prolonged the Depression*, Jim Powell argues that New Deal economic and regulatory policies were bad for many Americans, especially poor blacks.

Both books offer original and persuasive arguments and engage each other in a number of challenging ways. Ultimately, Powell's case is both more convincing and damning. His evidence reveals that the New Deal threw African Americans out of work, raised the price of food during the depths of the Depression, and granted monopoly bargaining powers to racist unions. In short, Powell writes, "Black people were among the major victims of the New Deal." Such a conclusion doesn't merely reveal FDR's often indifferent attitude toward minorities—in passing wartime travel restrictions and internment rules on Italian Americans, for instance, he derided them as "a bunch of opera singers"—it suggests that a thorough, fact-based re-evaluation of FDR's mythic status as a champion of the underdog is long overdue.

McMahon, an associate professor of political science at the State University of New York, Fredonia, attempts a bold rehabilitation of our 32nd president. While FDR is often credited with ameliorating the effects of the Great Depression—if not actually saving capitalism, as the self-described conservative publishing magnate Conrad Black recently suggested in his hagiographic *Franklin Delano Roosevelt: Champion of Freedom*—critics continue to denounce his failure to secure the civil rights of African Americans. McMahon's novel defense of FDR's race policy is that his creation of a strong executive and deferential judiciary set the institutional foundation for *Brown v. Board of Education*, the 1954 Supreme Court decision overturning the vile doctrine of "separate but equal." In McMahon's words, the Roosevelt Court was "constructed to be instructed by the executive branch on race."

McMahon makes a good case. Eight of Roosevelt's nine Supreme Court appointees were liberal progressives with New Deal sympathies. Five Roosevelt appointees voted with the majority in *Brown*. The Civil Rights Section of the Roosevelt Justice Department worked

Crossballs, courtesy Comedy Central

Crossballs Puzzle

that wants to get married to a tree with a woodpecker hole?" (Minor's character, it turns out, is in a loving relationship with "a cup of minestrone soup.")

Or consider biotechnology critic Luke Anderson, who begins a *Crossballs* debate on genetic manipulation by charging that his opponents are "techno-utopians" who want to create a world in which "those of us who don't have artificial chromosomes" will serve "the gene-rich." He seems to think no idea is too ridiculous for biotech supporters to believe. So he does not guess that *Crossballs* is putting him on when a futurist played by Andy Daly envisions using locust genes to create "potatoes that unearth themselves when they're ready to harvest." Or when a space enthusiast played by Besser proposes sending poor Guatemalan children to the moon so they can do the digging for the first lunar colonies.

"What is so dangerous is that these guys clearly sound like raving lunatics," Anderson says, "and yet they're in charge of huge amounts of money in the most powerful country in the world." Perhaps what is so dangerous is that we are so quick to believe the worst of those who disagree with us.

Senior Editor Jacob Sullum (jsullum@reason.com) is the author of Saying Yes: In Defense of Drug Use (Penguin Putnam).

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closely with the National Association for the Advancement of Colored People (NAACP) and other civil rights groups on cases dealing with police brutality, lynching, and voting rights abuses. These actions sent a powerful message to white supremacists in the South and their allies in Washington.

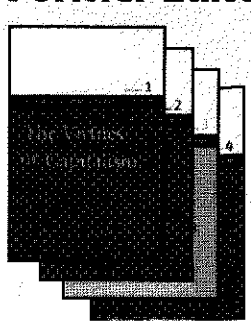
But McMahon doesn't satisfactorily address the major case where his model proves grossly inadequate. In *Korematsu v. United States* (1944), the New Deal Court upheld the Roosevelt administration's wartime internment of Japanese Americans. *Korematsu*, McMahon writes, "represented one of those rare times when the Roosevelt Court's deference to the executive clashed with the advancement of civil rights and liberties." One wonders why such an outrage deserves the qualifier *rare*. Doesn't this travesty cast into doubt the whole case for combining an empowered president with a pliant court? McMahon doesn't say.

Instead, he reassures readers that "the decision did not negatively affect the campaign to secure the civil rights of African Americans through the courts." The internment of American citizens was "hardly a victory for civil rights," he grants, then returns to his main focus. But since the New Deal Court did not begin enforcing the Equal Protection Clause in earnest until the late 1940s, the payoff for African Americans was slow in coming.

The most serious question raised by McMahon's thesis, however, concerns the nature of New Deal jurisprudence itself. In 1937, as Roosevelt's crowning legal victory, the Supreme Court overruled *Lochner v. New York*, the 1905 "bakeshop" case that established liberty of contract among the individual rights protected by the 14th Amendment from state and federal violation.

Writing for the majority in *West Coast Hotel Co. v. Parrish*, Chief Justice Charles Evans Hughes held that "the Constitution does not speak of freedom of contract." It says only that liberty may not be deprived without due process. And an economic regulation "which is reasonable in relation to its subject and is adopted in the interests of the community," he continued, "is due process." In fact, "even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment." In other words, the Supreme Court should generally presume the constitutionality of laws regulating the economy, as long as they appear "reasonable" and "in the interests of the community." This ruling secured federal and state

The Definitive Collection of the Works of Arthur Seldon, Former Editorial Director of the Institute for Economic Affairs



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Arthur Seldon was born in 1916 and has lived through the most dynamic and volatile century in the history of humankind. His advocacy of and undeterred belief in classical liberalism have sought to combat the intoxicating and deceptive "comfort" of collectivism created by the instability of two world wars and unprecedented technological and sociological change.

From the late 1950s Seldon's partnership with Ralph Harris (later Lord Harris), as Editorial Director and General Director respectively, made the Institute of Economic Affairs (IEA) the bellwether for classical liberal thought throughout England and eventually the world. In their early years, when very few people dared dispute Keynesian thought, Harris and Seldon argued against its determined centralization and its consequent collectivist tendencies. In the face of the status quo, IEA provided astute defenses of market solutions to various societal problems. Their arguments, always coherent, were often bolstered by case studies and compelling empirical evidence. They sought market alternatives to government-manipulated programs concerning such issues as public pensions, public education, public health care, social welfare, and corporate welfare. According to Nobel laureate Milton Friedman, the influence of IEA has "contributed greatly to the change in the intellectual climate of opinion around the world."

Seldon's writings are clear and accessible. He has the uncommon ability to translate complex information, often fraught with esoteric philosophical and technical jargon, into clear, understandable prose for both intellectual and lay consumption.

The Collected Works of Arthur Seldon spans 65 years of Seldon's influential thought and elaborates on the genesis of almost all the public/private debates currently before the world. His arguments are as compelling and relevant today as they were over a half century ago.

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Reconsidering Roosevelt on Race (cover detail)

regulatory power and eliminated the individual right to liberty of contract.

McMahon praises *West Coast Hotel*, arguing that the triumph of New Deal economics over the *Lochner* Court's jurisprudence removed an impediment to the civil rights of African Americans. He describes FDR's struggle to "replace a Supreme Court that had consistently restricted liberty" and writes of a "Supreme Court that had consistently endorsed the states' rights creed."

Both of those statements are false. Between 1905 and 1937 the Court upheld numerous state economic regulations, including laws regulating the entry width to coal mines (*Booth v. Indiana*, 1915) and requirements that railroad workers be paid in cash (*Erie R.R. Co. v. Williams*, 1914). These pro-regulatory decisions discredit McMahon's breezy assertion that the Court "consistently" endorsed laissez faire. Furthermore, a close reading of several key decisions by the *Lochner* Court shows that individual liberties were sometimes expanded at the *expense* of states' rights. *Lochner* itself explicitly declared the Court's authority to review state economic regulations under the 14th Amendment.

Subsequent rulings built on this precedent. *Pierce v. Society of Sisters* (1925) invalidated an Oregon law banning private schools. *Gitlow v. New York* (1925) read the First Amendment, in light of the 14th, as a protection against state restrictions on speech. In *Meyer v. Nebraska* (1923), a decision invalidating a state law that banned foreign language instruction for children until they reached the eighth grade, the Court offered a sweeping definition of liberty under the 14th Amendment.

"Without doubt," wrote Justice James C. McReynolds, one of the "Four Horsemen of Reaction" who later struck down parts of the New Deal on "Black Monday," liberty "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." This ruling is both strikingly libertarian and totally at odds with states' rights, a position McMahon seems unable to understand.

Most significantly, in 1917 the Court invalidated a Louisville, Kentucky, ordinance segregating residential housing blocks by race. The majority in *Buchanan v. Warley* noted that "property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it." The Court therefore held that the 14th Amendment "operates to qualify and entitle a colored man to acquire property without state legislation discriminating against him solely because of color." Although the Court at this time failed to reconsider the *Plessy v. Ferguson* (1896) decision ruling "separate but equal" to be constitutional in railroad accommodations, *Buchanan* demonstrates that liberty of contract could effectively challenge racist and discriminatory laws.

Sadly, the demise of *Lochner* in 1937 removed this potentially lethal weapon from the impending fight against Jim Crow. Although both libertarians and their critics frequently associate libertarianism with a states' rights position, liberty of contract demonstrates how an expansive reading of the federal Constitution that sometimes overrides states' rights can be quite consistent with libertarian principles.

This brings us to Jim Powell's *FDR's Folly*, an excellent counterweight to many parts of McMahon's book. Powell, a senior fellow at the Cato Institute and the author of *The Triumph of Liberty*, has gathered more than four decades of economic

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research, most of which has gone unreported by Roosevelt's flattering biographers, that systematically disproves the myth that the New Deal was a successful recovery program. Focusing on outcomes rather than intentions, Powell details the numerous ways the New Deal made life worse for African Americans in particular, and for poor people in general.

For example, the Agricultural Adjustment Act of 1933 authorized the secretary of agriculture to inflate prices by reducing farm acreage. This meant white farm owners were paid to let their land sit idle, often resulting in the eviction of sharecroppers and tenant farmers, a significant number of whom were African American. Powell reports that reduced acreage particularly affected sharecroppers, whose estimated annual cash income fell from $735 in 1929 to $216 in 1933. The Department of Agriculture, moreover, paid farmers to destroy crops and slaughter livestock. This occurred while millions of Americans went hungry. "This was just the sort of thing," Powell notes, "that John Steinbeck protested against in his 1939 novel *The Grapes of Wrath*."

States with a higher percentage of black residents and a lower per capita income received fewer New Deal dollars than richer, whiter states.

Southern states, home to the nation's poorest citizens yet full of dependable Democratic voters, received less New Deal spending than comparatively richer Western states, whose voters perhaps required additional persuasion to support Democratic candidates. Powell cites one study showing that states with a higher percentage of black residents and a lower per capita income received fewer New Deal dollars than richer, whiter states. Thus blacks were directly injured by New Deal policies, then ignored when it came time to dispense New Deal dollars.

It was New Deal labor laws that had the most pernicious impact on African Americans. The National Industrial Recovery Act (NIRA), in effect from June 1933 until a unanimous Supreme Court declared it unconstitutional in May 1935 (in *Schechter Poultry Corp. v. United States*), was considered the hallmark of the New Deal. In addition to creating the Works Progress Administration, the NIRA authorized the National Recovery Administration (NRA), which organized cartels, fixed wages and prices, and, under section 7(a), established the practice of collective bargaining, whereby a union selected by a majority of employees exclusively represented all employees.

While such compulsory unionism is routinely celebrated as a milestone for the American worker, many African Americans saw things differently. The NAACP's publication *The Crisis*, for example, decried the monopoly powers granted to racist unions by the NRA, noting in 1934 that "union labor strategy seems to be to obtain the right to bargain with the employees as the sole representative of labor, and then close the union to black workers." Members of the black press had something of a field day attacking the NRA, rechristening it the "Negro Removal Act," "Negroes Robbed Again," "Negro Run Around," and "No Roosevelt Again."

NRA codes harmed other poor

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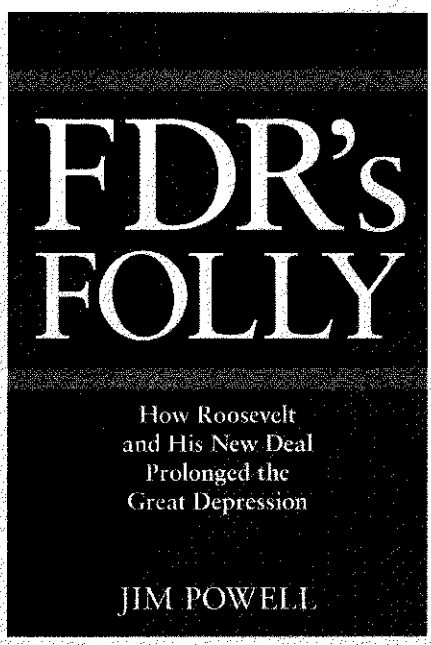

groups as well. By setting the price of food and goods above market levels, the agency's price controls made it that much more expensive for the nation's poor and unemployed to provide for themselves and their families. Struggling entrepreneurs also suffered. Jacob Maged, a 49-year-old immigrant dry cleaner, spent three months in jail in 1934 for charging 35 cents to press a suit, rather than the NRA-mandated 40 cents.

To meet the inflated payrolls required by New Deal minimum wage codes, employers eliminated unskilled and marginal positions, precisely the sort of jobs filled by African Americans and other disadvantaged groups. According to a Labor Department report, between 30,000 and 50,000 workers, primarily African Americans in the South, lost their jobs within just two weeks of the activation of the Fair Labor Standards Act (1938), which set a uniform minimum wage. Not surprisingly, both unions and industrialists in the North favored the minimum wage, since it undercut their competitors in the South.

In 1935 the National Labor Relations Act (or Wagner Act, after its sponsor, Democratic New York Sen. Robert Wagner) revived section 7(a) of the recently defunct NRA and granted monopoly bargaining power to unions selected by a majority of employees. Neither company-sponsored unions nor unions representing a minority of workers were permitted. The act's original draft contained a clause forbidding discrimination against African Americans by federally recognized unions, but the clause was removed at the behest of the American Federation of Labor, a notoriously racist outfit at the time.

Predictably, FDR failed to spend any of his considerable political capital to retain the clause. Empowered by the Wagner Act, American unions brazenly continued their decades-long discrimination against African Americans, the effects of which are still visible in racial disparities within unionized trades such as construction.

So Franklin Roosevelt's New Deal increased poverty and joblessness among African Americans, empowered discriminatory labor unions, and, when the Supreme Court overturned *Lochner v. New York*, removed an effective legal tool to challenge segregation laws and other racist state actions. McMahon's ambitious attempt to salvage FDR's record on race is clever, but his focus on the long-term and secondary effects of Roosevelt's judicial nominees and policies fails to convince in the face of the direct negative outcomes the New Deal produced for many American blacks. ▮

Damon W. Root (d_w_r@hotmail.com) is a writer living in New York City.

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FDR's Folly (cover)

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Surf's Up

Why Bill and Ted are the ultimate Americans

Sara Rimensnyder

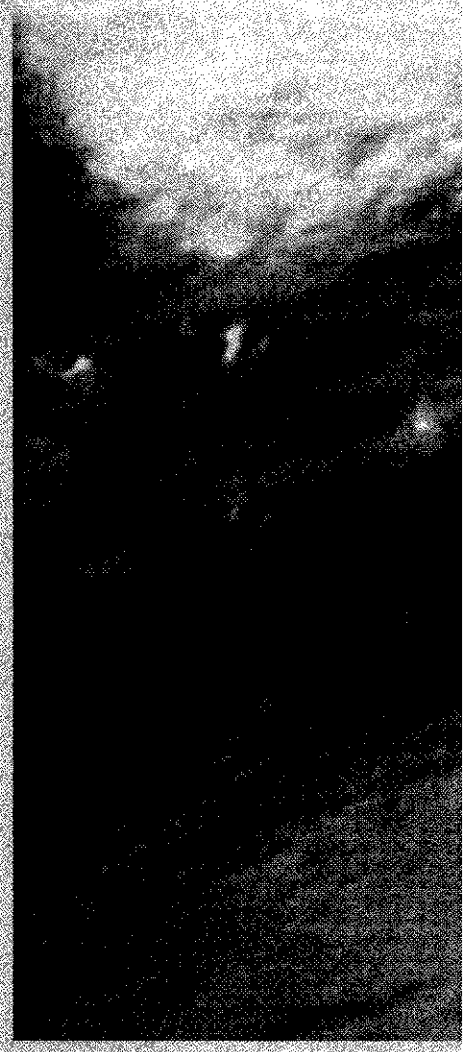
From Gidget to Jeff Spicoli, Hollywood has branded the surfer America's quintessential dumb blond. The 1989 screen classic (*totally* classic) *Bill & Ted's Excellent Adventure* consolidated the pop culture archetype: Surfers are dumb but sometimes lovable slackers who abandon meaningful pursuits like high school history to catch most excellent waves and, more important, *party on, dudes!* (History hasn't really cared that Bill and Ted never actually seemed to surf.) If a surfer is lucky enough not to be a complete blockhead, he's apt to be a deviant—say, robbing banks while wearing a Nixon mask, à la *Point Break*.

Such fun-but-facile takes only brush the surface of a sport and culture that encode many traits Americans celebrate: daring individualism and courage, rejection of social conformity, embrace of risk, eagerness to harness technology to go faster, farther, higher than the next guy.

Enter *Riding Giants*, Stacy Peralta's new documentary about big wave surfing, which explores those avenues while presenting surfing as an influential and meaningful subculture that values courage, freedom, and fun for the sake of fun. What's more, to judge from Peralta's account, the surfing industry—corporations that hawk billions in gear annually and promote themselves by sponsoring competitions and surfers—has changed the sport and its culture but not corrupted them, a phenomenon that undermines the distinction many surfers (and denizens of other countercultures) like to draw between commerce and integrity.

"The surfers in this film were great sportsmen and adventurers just like the great heroes of baseball, but they founded a culture and a lifestyle that, to this day, people participate in whether they surf or not," says Peralta, who established himself as a documentary filmmaker with the skateboard doc *Dogtown and Z Boys*, a surprise hit in 2002. "I thought it was a story that deserved to be told."

The film starts with a cheeky crash course on the history of the sport, then homes in on three major stories: the rise of modern surfing in 1950s Hawaii; the surfing world's 1992 discovery of the big waves at Maverick's, a beach in Northern California that board shaper Jeff Clark had already surfed solo for 15 years; and finally, the insane landscape of tow-in surfing, in which muscleman Laird Hamilton and others use jet skis to drop into 80-foot swells.



Riding Giants is most compelling when documenting that Shangri-la period in Hawaii, when legendary big-wave rider Greg Noll and a ragtag band of swashbucklers descended upon the North Shore of Hawaii to live in Quonset huts, avoid the Man, and surf nonstop. "They traded in the leather shoes for the thongs," says Peralta. It was a counterculture very much in the spirit (if not the aesthetic) of the Beats, the much more famous rebels of the supposedly buttoned-down 1950s.

Noll, who surfed in black-and-white striped board shorts and specialized in conquering waves everyone else considered too big, epitomized the lifestyle. Now 67, Noll still rattles off a quip a minute and is the most charismatic, entertaining voice in *Riding Giants*.

"When we started coming to the North Shore," says Noll, "the first time we blew through Haleiwa, in my old truck with six or seven surf-crazed Haole surfers with boards hanging out the back and our favorite lady's underwear hanging on the antenna of the car...I remember looking in the rear view mirror and these old mom and pop store owners are all kinda hanging out the door to see what just blew through town."

The sleepy Hawaii that Noll fondly remembers really didn't recover. By the early 1960s, the secret was out: A glut of movies such as *Gidget*

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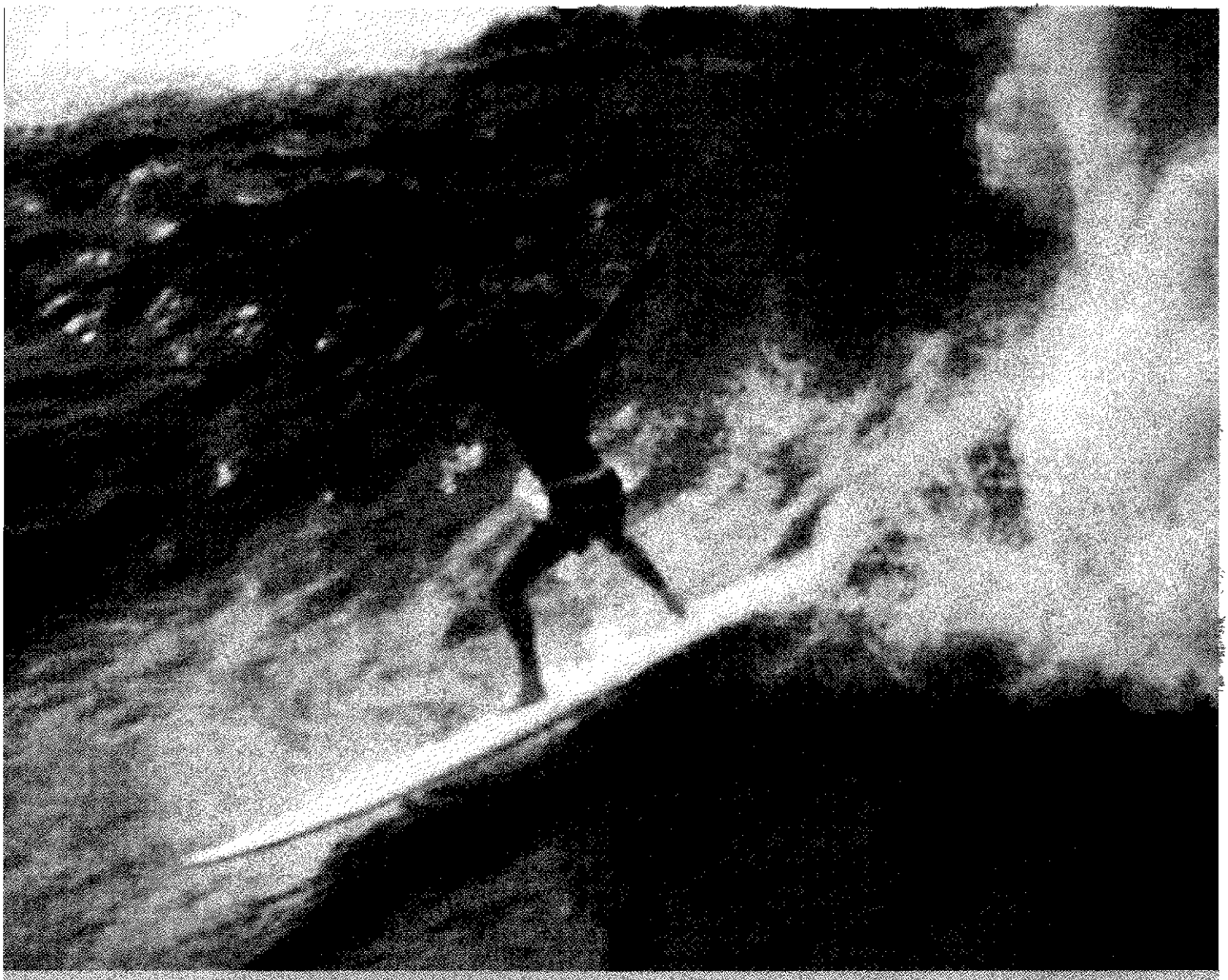

and *Ride the Wild Surf*, often featuring footage of guys such as Noll riding waves, brought the masses to the beach, and surfing as a thriving bohemian lifestyle didn't survive them.

But to Peralta's credit, *Riding Giants* doesn't mire itself in nostalgia or try to suggest that the cheesy movies (or the big-money sponsorship business) ruined the sport or the people who practice it. Peralta eschews the knee-jerk narrative in which those living beyond the break of cultural trends can either remain "authentic," eschewing any opportunity to make a living off their way of life, or sell out and bid farewell to their souls.

What is especially heartening is that Peralta, himself a veteran of the skate punk scene, isn't getting drubbed for this message—even or especially among those ordinarily quickest to complain about the corrupting effects of commerce. Online and in print, surfers are raving about *Riding Giants*—more enthusiastically than critics—not seeming to care that it's funded in part by surf apparel giant Quiksilver, part of the multibillion-dollar industry that many watermen have blamed for polluting the purity of the sport.

Even Greg Noll, who once made his living selling boards, has been known to criticize the surf industry as corrupting. Yet he's clearly proud of the story told in *Riding Giants*—all the way through the final act, which focuses on Laird Hamilton, who as today's top big-wave rider makes a handsome living off his sponsor, Oxbow, a French sportswear company.

"The hard-core guys like Laird...if they didn't get a penny, they'd still be doing it," says Noll. "I'm not sure if they're gonna be too happy if you put that in the magazine, because their sponsors might squeeze them a little bit. But basically, those guys do it for the pure joy." ■

Sara Rimensnyder (saragracer@hotmail.com) is a writer living in Los Angeles.

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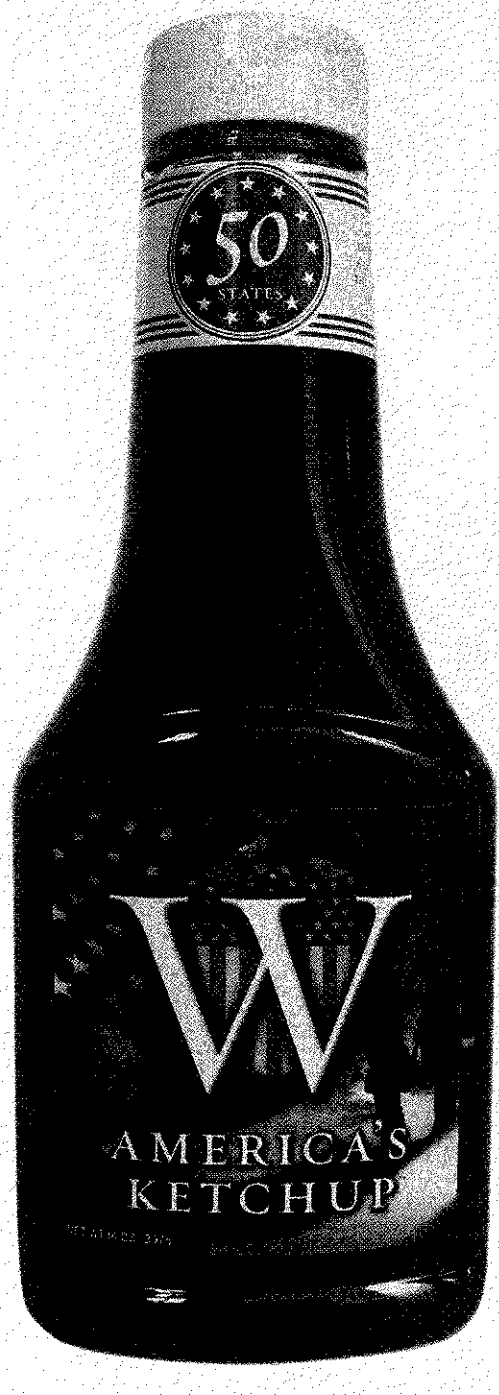
Food Fight

Charles Paul Freund

HERE'S W KETCHUP, perfect for pouring over freedom fries. "You don't support Democrats," says the tag line, "why should your ketchup?" The brand was born, recalls the manufacturer's chairman, when a group of friends found that reaching for Heinz condiments was spoiling their barbecues. The company insists that *W* stands for *Washington*.

Political foods used to be a novelty in the U.S. There was a 1964 campaign soft drink named Goldwater, for example, and its Democratic answer, Johnson Juice. The 1970s saw the short-lived Billy Beer, named for Jimmy Carter's hapless brother (who actually drank Pabst). In recent years, though, political branding has become a niche of sorts. The Iraq invasion saw a wave of anti-Saddam hot sauce brands. Ben & Jerry's, the ice cream outfit, is one of numerous companies to associate their products with liberal causes. In response, some conservatives are now producing Star Spangled Ice Cream, available in such flavors as Nutty Environmentalist and I Hate the French Vanilla.

In fact, W ketchup itself has inspired an alternative. A product called Bush Country Ketchup accuses the W brand of centrist politics, and of merely "masquerad[ing] as a conservative condiment." Bush Country markets itself with the tagline, "Making sure Kerry won't ketchup to W." ▮



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How Foreign Aid Can Help the Poor—and Why It Doesn't

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People who think foreign aid ought to be used to help end poverty complain that it has too many strings attached. That strings are attached is true; the problem is not too many strings but rather that the wrong strings are attached to end poverty.

Most aid reflects a deal between leaders in rich, democratic countries and leaders in poor, despotic countries. Autocrats need money to keep core supporters—the military, key bureaucrats, close family members—in line, and democrats need policy concessions that help with reelection. Since few voters care much about foreign policy, these are marginal effects and so small amounts are spent on aid.

A natural opportunity exists for deals between democrats and autocrats. The latter don't need successful policies to stay in office, so they can agree to policies their citizens don't like in exchange for money to sustain them in power. Just consider Hosni Mubarak's agreement for Egypt to live in peace with Israel. In fact, autocrats like Mubarak must maintain their citizenry's dislike for policy concessions they grant. If the policy could be enforced without aid, there would be no reason to continue to pay. Democratic leaders cannot easily buy incumbency; they must deliver policies their constituents like. Thus, the main string attached to foreign aid deals is money for policy. That is a winning situation for leaders in donor and recipient countries and is pretty good for donor citizens too. But it is bad for ordinary citizens in the recipient country. Their welfare is sold for aid.

No wonder aid does little to raise incomes, improve health or education, or do the myriad other things well-intentioned people would like aid to do. How might these problems be corrected? There are four steps to changing aid into a means to help the poor:

1. Encourage individuals and groups to give aid through NGOs or directly to needy recipients, rather than by and to government. Shifting aid outside government reduces the danger of government deals that do not alleviate poverty. (Currently the United States contributes about $56 per American citizen in global aid. Total assistance could easily be maintained if wealthier families contributed twice that, deducting it from their taxes as charitable giving.)
2. Require aid recipients to open their books to independent, external audit.
3. Broadcast audit results in easily digested form.
4. When aid must be given to governments, give to those that have at least two organized, freely operating political parties or other political groups that articulate views different from those of their government, and be sure that these groups have an unencumbered right to compete against the incumbent leader for office.

Until poverty-alleviating aid is moved out of the government's domain and into the hands of caring citizens, and **until government aid is constrained to go as directly as possible to those who need the money the most, aid will continue to serve as a means to achieve policy goals (a good thing), to prolong despotism (a bad thing), and to lead recipients to engage in policies that are against the interests of their own citizens (a very bad thing).**

—Bruce Bueno de Mesquita

Bruce Bueno de Mesquita is a senior fellow at the Hoover Institution and the Silver Professor of Politics at New York University.

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